

Adam Redzik

Rafał Lemkin (1900-1959)

co-creator of international criminal law

Short biography



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INTRODUCTION

In the literature today there is no better known Polish lawyer in the world than Rafał (Eng. Raphael) Lemkin^{[53,57]*}. This is due to his struggle to establish laws penalising crimes driven by hatred towards people of specific races, religions, ethnicity or social groups. Today not only every lawyer, but every educated individual ought to know that mass killings committed with the intention of exterminating in whole or in part the aforementioned groups constitute genocide. The notion itself is widely

* The numbers in square brackets indicate the items in the bibliography. The number after the comma is the page. Items from the bibliography are separated by semicolons, e.g. [27, 117; 34, 110] = W. Korey, *An Epitaph for Raphael Lemkin*, New York [2001], p. 117; S. Mikke, *Adwokat Rafał Lemkin – wybitny nieznany*, "Palestra" 2006, no. 1–2, p. 110.

known and is used, sometimes maybe too often.

With the development of international criminal law, including protection against the most severe crimes, came an interest in the life and activity of the man who was the creator of the notion of “genocide” and the main author of the UN Convention on the Prevention and Punishment of the Crime of Genocide of December 9, 1948. This man was Rafał Lemkin (1900–1959), a Polish jurist, a prosecutor and later an advocate, alumnus of the Lwów school of criminal law of Juliusz Makarewicz^[40, 495–496], and lecturer of the Free Polish University in Warsaw. Although there is a lot of world literature dedicated to Lemkin, it is largely inaccurate when it comes to two-thirds of his life^[20; 21; 22; 23; 24; 27; 31; 37]. It is incorrect both factually and on the interpretative level. This paper aims to eliminate these errors – it is a synthetic monograph on the life of the “man from the genocide Convention”, whose knowledge, capabilities, experience and position amongst those learned in international law concerning the notion of the unification of criminal law, were acquired in Poland during the interwar period as a state official.

The paper is largely based on archives and on other sources, complemented by the literature in this field. The sources and the literature can be found at the end of this paper.

YOUTH

Rafał Lemkin was born on 24 June 1900 in a farm called Bezwodne/Bezwodna (near Międzyrzecz, south of Wołkowysk) to a family of Jewish farmers, Joseph and Bella née Pomeranc. He had two brothers: Elias (who died in 1983) and Samuel (who died ca. 1917)^[2; 48; 53]. His father was a tenant farmer of an agricultural farm in Bezwodne, and then Ozierzysko (rus. Ozjerisko), which he ran, and his mother, a well-read woman, raised the children^[123, 3–19]. Three languages were spoken in the Lemkin family home: Yiddish, Russian and Polish. Russian literature dominated the bookshelves, but books in Polish were probably to be found there too, including the works of Henryk Sienkiewicz^{*[53, 2]}.

* Henryk Sienkiewicz (1846-1916), eminent Polish writer, winner of the Nobel Prize and author of *Quo Vadis*.

At first he was home-schooled – during the winter evenings, free from work at the farm. After the Lemkin family moved to the nearby Wołkowysk, the sons started their education at school. The turmoil of war and the consequent marches of the Russian and German troops through the town largely destroyed it. Little is known of what exactly happened to Lemkin between 1913 and 1919. According to some testimonials, he left for Vilnius for a short time to attend secondary school (*Gimnazjum*).



Manor in Bezwodna (Bezwodne). Probably Lemkin's birthplace

The application form which he filled in at the University of Jan Kazimierz suggests that he then moved to Białystok and passed his baccalaureate there on 30 June 1919. It cannot be explained how he did this, since there was no state secondary school in Białystok at the time^[57, 144–145]. Did he sit external exams?

EDUCATION

– Jagiellonian University
in Kraków
and Jan Kazimierz University
in Lwów

In 1919 Lemkin moved to Kraków and enrolled in the Faculty of Law and Administration of the Jagiellonian University (matriculation book no 3188, date of payment of the student fee 8 October 1919)^[2; 7; 57, 144]. He attended two full semesters in the academic year 1919/1920, i.a. the lectures of professors Stanisław Wróblewski, Stanisław Estreicher, Stanisław Kutrzeba, Rafał Taubenschlag, Michał Rostworowski, and of a criminal lawyer and law philosopher, Edmund Krzysuski.

The case of Lemkin's studies in Kraków is little known, so it is worth presenting a more detailed account.

From 1919 the candidates to Polish academic institutions were required to present certificates proving that they had served in the Polish Army or in the allied armies^[40, 163]. Enrolling for the winter semester 1920/1921 – right after the Polish-Bolshevik War and the “Battle of Warsaw” – Lemkin enclosed a certificate that he served in the sanitary unit of the chancellery of the military court (*sąd polowy*) of the 2nd Army Command in Wołkowysk. He was enrolled for the third semester^[9; 57, 144]. At the beginning of 1921 notification arrived to the President of the Jagiellonian University (from the chancellery of the provost court of the 2nd Army signed by director Zbigniew Pawłowski) informing that Lemkin was unknown to the chancellery, and that the certificate that he had presented had been forged, probably by a student of the Faculty of Law of the Jagiellonian University, sergeant Michał Schneeweiss, who was working as a court stenographer^[57; 146–147].

On 22 February 1921 the Dean of the Faculty of Law and Administration Prof. Stanisław Kutrzeba filed a complaint to the Academic Senate to initiate disciplinary proceedings against Lemkin and Schneeweiss, and the Academic Senate on 10 March 1921 adopted a resolution to hand over the investigation to Józef Brzeziński (professor of canon law and the dean of the Disciplinary Board of the Jagiellonian University)^[57, 148–149]. At the time, Lemkin was studying and living in Kraków at ul. Św. Sebastiana 20 (20 St. Sebastian Street). The Disciplinary Board filed a notice to interrogate director Zbigniew Pawłowski on 31 May 1921 to the court-martial of the Second Army to determine how he knew that Schneeweiss “forged certificates, and in particular Lemkin's”, and to ask a few more questions. From the content of the letter we can assume that the certificate

that Pawłowski had informed about in writing on January 1921 was not in the files of the Jagiellonian University. The Disciplinary Board requested in that manner additional explanations as to how Pawłowski came in possession of such information^[57, 149–150]. From the minutes of the interview with Pawłowski conducted on 13 June 1921, it appears that he heard about the certificate from private persons in Wołkowysk, whom he was “no longer seeing”^[57, 150–151]. It is astonishing that he had not known from his own experience that Schneeweiss issued certificates, all more so since Lemkin had benefited from them (“I heard about it in a private conversation”). In all cases, Pawłowski was referring to private conversations he had had with persons unknown to him. This sounds like revenge: someone wanted to harm Lemkin. During the disciplinary proceeding Lemkin testified that he had worked as a volunteer at the court-martial, that he even kept the minutes, but he later retracted these statements, stating that he had worked at the sanitary unit. It is hard to establish what the truth was^[57].

Wołkowysk was liberated in 1920 by the 3rd Infantry Division of the Legions of General Leon Berbecki, fighting as part of the 2nd Army of General Edward Rydz “Śmigły”. There was fighting in the city and its outskirts. This was the place where the attacks came from on September 1920 during the Battle of the Niemen River (the second great battle after the Battle of Warsaw). Sanitary units operated under the division of the 2nd Army. Lemkin surely worked in one of them. One cannot exclude that he could have had contact with the military courts, but he was not formally a court clerk, and neither was he at the front. Did this have any meaning? Lemkin surely presented a certificate of his work in the sanitary units, and in his résumé he mentioned about his work in the military court. He testified that he wanted Pawłowski to issue him a work certificate, but Pawłowski refused, and Sergeant Schneeweiss, a court reporter, came

to his aid^[57, 152–155]. When Pawłowski had learned that Lemkin was still studying in Kraków, he wrote to the authorities of the university about his suspicions of possible forgery.

The case had grave consequences for Lemkin. The Disciplinary Board composed of Prof. Brzeziński, Prof. Tadeusz Dziurzyński and Prof. Rafał Taubenschlag, at a session held on 23 June 1921, petitioned to give Lemkin a reprimand and not to take into account his summer semester in the academic year 1920/1921. His repentance and his guilty plea, in spite of Pawłowski's unfavourable testimony, were outlined^[57, 154–155]. At a session held on 8 July 1921 the Academic Senate took the decision to indefinitely expel (*ultra petita*) Lemkin from the Jagiellonian University^[57, 155]. On 15 July 1921 the Senate sent to Lemkin notification informing him that according to article 98 of the Act on Academic Schools from 1920 he was expelled definitively, underlining that his guilt was beyond doubt, because he knowingly and willfully presented a forged certificate^[57, 155–156]. After reading the notification, Lemkin sent a request to issue him a final certificate, because he had “not been deprived of the possibility of continuing his studies at another university”^[57, 156–157]. The university president sent a letter to the dean's office asking for an opinion. Dean Kutrzeba indicated that Lemkin had pleaded guilty and that he had shown “true remorse”, and in view of these facts, also taking into account the fact that the Disciplinary Board had petitioned only to give him a reprimand, and that the Academic Senate had expelled Lemkin, he agreed to “lower the sentence” and not to “inscribe the expulsion” into his student record book^[57, 157].

On this basis, Lemkin was given his final certificate on 3 August 1921, with a certification that he had completed two semesters of legal studies (1919/1920), without any mention of

the disciplinary sentence, with a note that these semesters met the requirements of the binding academic law^[57, 157–158]. With the certificate, Lemkin went to Lwów (now Lviv) to enroll in the Faculty of Law and Political Science (perhaps also the Faculty of Philosophy). In Kraków the case had not ended yet, because the new university president ordered the disciplinary sanction to be inscribed in Lemkin's student record book^[57, 158]. By that time Lemkin was already in Lwów, maybe the letter from the Jagiellonian University got lost.



Main building of the University of Jan Kazimierz in Lwów since 1921, formerly the seat of the Diet of the Kingdom of Galicia and Lodomeria, today the main building of the Ivan Franko National University of Lviv

In Jan Kazimierz University of Lwów Lemkin matriculated on 12 October 1921^[12; 17, 152]. The subjects that he had passed in the first year in Kraków were acknowledged by the new university. He repeated the second year in Lwów. He attended lectures on the history of

law by Oswald Balzer, on Roman law by Leon Piniński and by Marcelli Chlamtacz, on church law by Władysław Abraham, on philosophy by Mściśław Wartenberg, on civil law by Ernest Till and Roman Longchamps de Brier, commercial law by Aleksander Doliński, civil procedure by Kamil Stefko and Maurycy Allerhand, constitutional law by Stanisław Starzyński, administrative law by Zbigniew Pazdro, financial law by Ignacy Weinfeld, statistics by Jan Piekalkiewicz, economy by Leopold Caro, criminal policy by Juliusz Makarewicz, criminal law by Julian Nowotny, criminal procedure by Piotr Stebelski and on international law by Ludwik Ehrlich. He was on closer terms with Prof. Juliusz Makarewicz, a renowned expert in criminal law, an enthusiast of the sociological school of criminal law and the main author of the Criminal Code of 1932. He attended his seminars for a couple of years. It was at Makarewicz's seminars that he prepared his first academic works. Makarewicz himself wrote about Lemkin's association with his seminars in the preface to the translation of the Soviet Criminal Code of 1922 (*Kodeks Karny Republik Sowieckich*^[59]) made by Lemkin and Tadeusz Kochanowicz (in collaboration with Ludwik Dworzak, Zdzisław Papierkowski and Roman Piotrowski. Among other scholars, Lemkin's circle of consultants could have consisted of experts in criminal law, constitutional law and international public law (law of nations)^[44]. As already mentioned, he attended lectures of at least three criminal law specialists, in Kraków,

E. Krzymuski, and in Lwów the venerable P. Stebelski and J. Nowotny. As far as constitutional law and the law of nations are concerned, he attended the lectures of S. Starzyński and L. Ehrlich in Lwów, and he was in touch with M. Rostworowski. Probably in Lwów he met Emil Stanisław Rappaport, an assistant professor (docent) of the Jan Kazimierz University. Although Rappaport is not mentioned in the certificate of completion of Lemkin's studies, Lemkin could have met him at the Makarewicz seminar, all the more so in view of the fact that Lemkin was an observer at the non-resident Criminal Law Section's sessions of the Codification Commission of the Republic of Poland (Rappaport was a member and secretary of the CCRP).

In Lwów Lemkin published the translation of Chaim Bialik's work entitled *Noah i Marynka*. He wrote a preface to it, comparing Bialik's work to Adam Mickiewicz's *Pan Tadeusz*^[60].

Indeks: 1905

Rok akademicki: 1935/36
 Trymestr: I
 Bieżący rok studiów studenta: IV

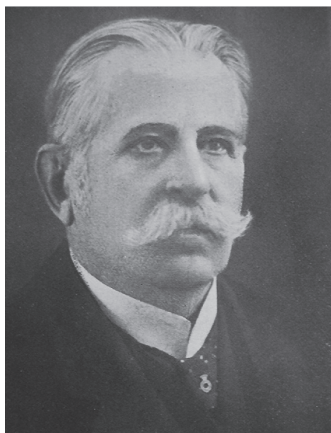
Karta wpisowa do użytku Dziekanatu.

Imię i nazwisko	Rafael Lemkin		
Wzrost i data urodzenia	H. Bernardus 29.11.1900		
Matka - język ojczysty i przynależność państwowa	Litwa, Litwa, Litwa		
Adres, nazwa i miejsce zamieszkania rodziców	Litwa, Litwa, Litwa		
Adresy lub zmarłych ewent. opiekuna	Litwa, Litwa, Litwa		
Wskazanie tutelajskie wpisującego się	Dzielnica Litwa, Litwa, Litwa Nr. 21		
Instal bankowy, w którym zapisujący się przebywał w poprzednim okresie (semestrze lub trymestrze)	Litwa, Litwa, Litwa		
Palenka lub pobierał (a) stypendium roczne	z fundacji		
udane dekretom	192, 1		
z dnia	192, 1		
Wzrost do służby wojskowej	Litwa, Litwa, Litwa		
Wypisuje się jako student Wydziału	Litwa, Litwa, Litwa		
(nowopisujący się) świadectwa dojrzałości gimnazjum w	Litwa, Litwa, Litwa		
z dnia	Litwa, Litwa, Litwa		
(już imatrikulowany) karty imatrikulacyjnej z dnia	Litwa, Litwa, Litwa		

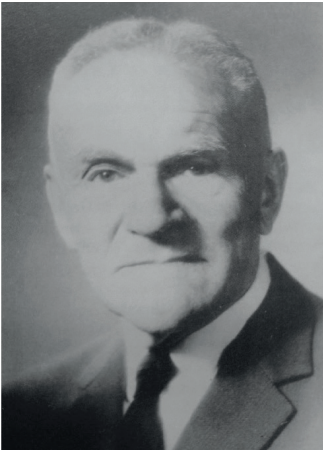
Fragment of the enrolment card for the fourth year of legal studies at the Law Department of the Jan Kazimierz University in Lwów.



Juliusz Makarewicz (1872-1955). Rafael Lemkin's mentor. Lemkin worked under his guidance for several years



Stanisław Starzyński (1853-1935), professor of constitutional law, one of Lemkin's lecturers at Lwów University

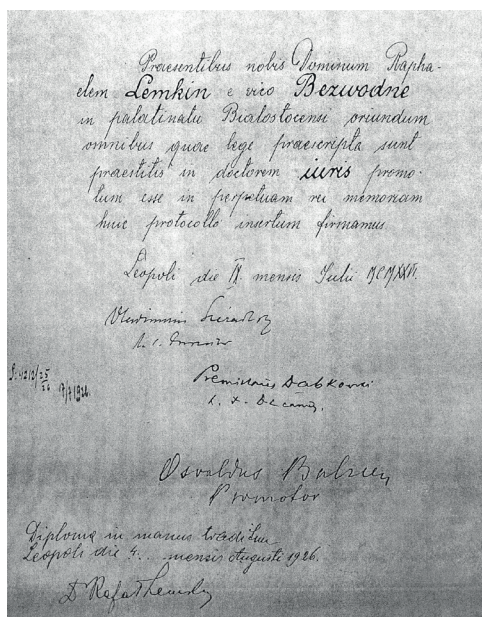


Ludwik Ehrlich (1889-1968), professor of international law, one of Lemkin's lecturers at Lwów University



Oswald Balzer (1858-1933), professor of history of law at Lwów University, one of the most renowned Polish historians of his times. Lemkin's promoter (professor taking the ceremonial doctoral oath)

Lemkin did his doctorate on 9 July 1926 on the basis of three rigorous exams that he passed (the so-called „rygoroza”): the judge’s exam (passed 22 April 1925), political (passed 27 April 1925), and historio-legal (passed 3 July 1926) [18, 615]. His „promoter”, that is the professor taking the ceremonial doctoral oath, was Prof. Oswald Balzer, and it is he who is inscribed on Lemkin’s doctoral diploma as his promoter (he did not need to have any close links with the promoted doctor), alongside the university prorektor, Włodzimierz Sieradzki, and the dean, Przemysław Dąbkowski^[19, 684].



Entry from the Book of doctoral dissertations of Jan Kazimierz University in Lwów (1926)

INTEREST

in the Armenian Genocide in the Ottoman Empire

During his studies Lemkin was interested in soviet and fascist criminal law and in international criminal law. He observed the trial of Saghomon Tehlirian, who on 15 March 1921 shot in Berlin the former minister of internal affairs of Turkey – Talaat Pasha, who was responsible for the genocide of Armenians in the years 1915-1918. After he had killed him, he said, “this is for my mother”. After the trial, which was widely publicised throughout Europe, Tehlirian was acquitted by the jury. The trial of the assassin Szolem Szwarcbard who shot a Ukrainian leader Symon Petlura on 25 May 1926 had a similar ending. He was also acquitted by the jury^[48, 146–149].

In his autobiography (*Totally Unofficial...*, p. 20^[123]), Lemkin writes that he spoke with his professors at the JKU on the issue of why international society did not react when Turkey killed hundreds of thousands of Armenians. The professors replied that it was a sovereign state power. Lemkin's interlocutors could have been criminal lawyers or constitutional law experts. However, we can only presume this. Lemkin was undoubtedly on closest terms with Makarewicz, but who else might his interlocutors have been? Starzyński? Ehrlich? Someone else? Only after many years did he resume his reflections on the problem that he had noticed during his legal studies in Lwów. In the meantime, he was pursuing his career in the Polish system of justice.

PROSECUTOR,
LECTURER, OBSERVER
of the work of the Codification
Commission

After his studies, Lemkin did his military service in Grodno (as stated by R. Szawłowski^[53, 4]), and soon after he started his prosecutor's professional training. Probably thanks to the high position in the government of Prof. Waław Makowski, whose seminar he had attended in Warsaw at the university, or of the aforementioned Emil Stanisław Rappaport, Lemkin became the secretary of the Appellate Court in Warsaw. In 1927 he published a translation of the new Criminal Code of Soviet Russia with the foreword written by prof.

Makowski (*Kodeks karny Rosji sowieckiej 1927*^[61]), and in 1929 a translation of the fascist criminal code – also with Makowski's foreword (*Kodeks karny faszystowski*^[63]). In the same year he joined the editorial board of the "Revue Polonaise Civile et Criminelle. Législation Criminelle", edited in French in Warsaw. In volume 3/4 for the years 1931-1932 he wrote an article *Les principes essentiels du Code Pénal Polonais de 1932*^[68].

After completion of his legal apprenticeship, Lemkin was nominated a sub-prosecutor of the District Court in Brzeżany (the area of Court of Appeal in Lwów), but soon he was transferred to Warsaw^[53, 5]. There he worked as a prosecutor and secretary (recorder) in criminal law sections and subcommissions of the Polish Codification Commission, which was probably made possible thanks to E. Rappaport, who since 1924 had been the General Secretary of the CCRP. It was also thanks to him that he was employed at the Free Polish University (*Wolna Wszechnica Polska*). The cooperation of Lemkin with Rappaport resulted in the publication of a short commentary to the criminal code (*Kodeks karny r. 1932: z dostosowaniami do kodeksu tezami z orzeczeń Sądu Najwyższego*^[72]). He himself published the Criminal Code in short version (*Kodeks karny r. 1932 wraz z Przewodem o wykroczeniach i Przepisami wprowadzającymi*

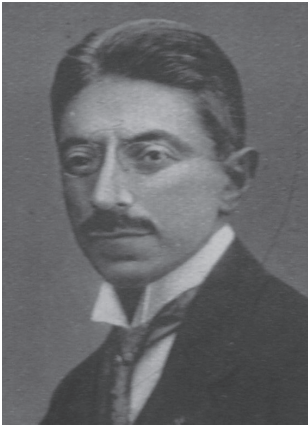
¹ In English: *Criminal Code of the Soviet Russia*.

² In English: *Fascist Criminal Code*.

³ In English: *Criminal Code 1932: with appropriate references to Supreme Court opinions, relevant quotes from the legislative reasons of the project of the Codification Commission, with an index and with explications by J. Jamontt and E. St. Rappaport; with the support of R. Lemkin*.



Wacław Makowski (1880-1942), a specialist in criminal and constitutional law, professor at the University of Warsaw, the last Marshal of the Polish Sejm of the Second Republic, Rafał Lemkin's mentor in Warsaw



Emil Stanisław Rappaport (1877-1965), Secretary General of the Polish Codification Commission, lecturer of the University of Jan Kazimierz in Lwów, professor of the Free University of Poland in Warsaw, participant of numerous international congresses, Rafał Lemkin's mentor in Warsaw and on the international forum

kodeks karny i prawo o wykroczeniach (this was a text of acts with information about case law)^{4[73]}. In 1933 Lemkin published a treatise, written on comparative legal method published by of the Institute of Criminology of the Free Polish University (volume 1 – the only one) – entitled: *Sędzia w obliczu nowoczesnego prawa karnego i kryminologii*^{5[82]}.



Rafał Lemkin. Photograph from ca.1934.

⁴ In English: *Criminal Code 1932 with the Act on Misdemeanors and with Introductory prescriptions to the Criminal Code and the Act on Misdemeanors: with a preface and an index by R. Lemkin.*

⁵ In English: *The judge in the face of modern criminal law and criminology.*

POLISH DELEGATE

to international criminal law
congresses, including
the conference of the International
Bureau for the Unification
of the Criminal Law

The first Conference for the Unification of Criminal Law, organised under the auspices of the International Association of Criminal Law (AIDP – Association Internationale de Droit Pénal) was held in Warsaw in 1927. E. S. Rappaport was involved in the organization of the conferences on the Polish side. It was most likely he who prompted the young alumnus of the Lwów school of criminal law to take an interest in the problems of international criminal law in

practice and made him a member of the Polish delegation to following international congresses and conferences. In 1931 Lemkin was a secretary-member of the Polish Society of Criminal Legislation, which was the Polish branch of the AIDP. Towards the end of the pre-war years, Lemkin was the general secretary of the society.

Lemkin was a participant of the Polish delegation at the 3rd International Conference for the Unification of Criminal Law in Brussels (25-27 June 1930). Aleksander Lednicki, Dr Włodzimierz Sokalski and Prof. E. S. Rappaport were also among the delegates.

Lemkin was also a delegate to the 10th International Criminal Law and Penitentiary Congress, which took place in Prague on 25-30 September 1930. Besides him, the delegation consisted of, among others, Juliusz Makarewicz, Emil Stanisław Rappaport, Aleksander Mogilnicki, Edward Neymark, Mieczysław Ettinger and Helena Wiewiórska^[35, 582].

Lemkin participated in the 4th International Conference for the Unification of Criminal Law, which was held on 27-30 December 1931 in Paris, during which he gave his first lecture on the use of substances that might constitute a general hazard^[67].

In August 1932 Lemkin attended, as a Polish delegate, the 1st International Congress of Comparative Law organised by the International Academy of Comparative Law in The Hague. On April 1933 he presented a lecture about the role of the criminal judge in light of modern law and criminology at the 3rd International Congress of Criminal Law in Palermo^[76].

"BARBARITY"

AND "VANDALISM"

– the concepts of crime in light of the law of nations prepared for the Conference in Madrid in 1933, which Lemkin did not attend

In 1933 Lemkin was supposed to be a delegate to the 5th International Conference for the Unification of Criminal Law in Madrid. At that time he was a vice-prosecutor in the District Court in Warsaw. He prepared a lecture for the conference in which he postulated that the international society should regulate five crimes "against the law of nations": barbarity ("Whoever, out of hatred towards a ethnic, religious or social group or with the goal of

its extermination, undertakes a punishable action against the life, the bodily integrity, liberty, dignity or the economic existence of a person belonging to such a group, is liable, for the offence of barbarity, to a penalty of... unless punishment for the action falls under a more severe provision of the given Code. The perpetrator will be liable for the same penalty, if an act is directed against a person who has declared solidarity with such a group or has intervened in favour of one")⁶, vandalism (article 2 – Whoever for the same reasons as in article 1, "destroys works of cultural or artistic heritage, is liable, for the offence of vandalism")⁷, Whoever knowingly causes a catastrophe in international transport by ground, sea or air (article 3), an interruption in the international postal, telegraph or telephone communication (article 4) and knowingly spreads a human, animal or vegetable contagion (article 5).

The lecture was given in french (*Les actes constituant un danger général (interétatique) considérés comme délits de droit des gens. Rapport spécial présenté à la V-me Conférence pour l'Unification du Droit Pénal à Madrid 14–20 X 1933*) and he sent it to the planned attendees of

⁶ Polish: "Kto z nienawiści do zbiorowości rasowej, wyznaniowej lub społecznej, albo też w celu wyniszczenia (eksterminacji) tejże przedsięwzięcie czyn karalny przeciwko życiu, nietykalności cielesnej, wolności, godności lub podstawom bytu gospodarczego człowieka, należącego do takiej zbiorowości, za to przestępstwo barbarzyństwa ulegnie karze..., o ile czyn jego nie jest zagrożony surowszą karą w odnośnej ustawie karnej. Sprawca podlega tej samej karze, jeśli jego czyn skierowany został przeciwko osobie, która oświadczyła swoją solidarność lub ujęła się za jedną z wyżej wymienionych zbiorowości".

⁷ Polish: "niszczy dzieła kultury lub sztuki, będące wytworem jej ducha".

the appropriate Commission of the Conference. It was also printed in Madrid. The paper was also printed in "Głos Prawa" (*Przestępstwa polegające na wywołaniu niebezpieczeństwa międzynarodowego jako delicta sui generis...*^{8[78]}). Lemkin mentioned that the draft resolution was backed up by one of the vice-presidents of the Bureau for Unification (surely Rappaport). The main theses (about the crimes of barbarity and vandalism) were presented by Lemkin in German in a Vienna journal (*Akte der Barbarei und des Vandalismus als delicta iuris gentium*^[79]). The composition of the delegation to Madrid was changed at the last moment. Lemkin did not go. Perhaps Lemkin was stopped from going to Madrid by the minister of justice Czesław Michałowski and by Prof. E. S. Rappaport – some say that the reason for this was fear about the reaction of some delegates and countries to the theses of Lemkin's lecture.^[48; 53] It ought to be underlined that the notion of "barbarity" defined by Lemkin, became in 1944 the crime of "genocide".

⁸ In English: *The crimes constituting a general international danger as a delicta sui generis (Conclusions for the V Conference of the Bureau for the Unification of the Criminal Law in Madrid – "Głos Prawa" 1933, no 10.*

TRANSFER TO THE BAR

and further activity
on the scientific
and international fields

At the beginning of 1934 Lemkin quit his service as a prosecutor and filed a motion to join the Bar of the District Chambers of Advocates in Warsaw^[43, 296–297]. Probably, he entered the Bar in early spring. He opened his office in Al. Jerozolimskie 23, later (probably 1938) he changed address to Kredytowa 6, where he worked until September 1939 – in his own apartment.

In English literature it is written incorrectly that he was “sacked from the prosecutor’s office” because of Polish antisemitism or because he had criticised Hitler, or moreover because the

Polish government was on good terms with Hitler's Germany (the words of the ambassador of USA from the administration of B. Obama – Samantha Power^[37]). This is certainly untrue, and Lemkin transferred to the Bar for financial reasons, which he mentioned, although not directly (in his autobiography)^[123, 65-66].

In the 1930s Lemkin was active as an academic, writer and as an advocate. He published articles in "Palestra", "Gazeta Sądowa Warszawska", "Głos Prawa", "Głos Sądownictwa", „Wiadomości Literackie". In 1933 he wrote an article for "Palestra" entitled *Specjalizacja sędziego karnego* (1933)^[80; 81]. In 1935 he wrote an article for "Gazeta Sądowa Warszawska" entitled *Teroryzm* (with a draft of an international regulation about Terrorism)^[87]. He also wrote for "Głos Prawników Śląskich"¹⁰ (1937, vol. 2) and for "Encyklopedia Podręczna Prawa Karnego"¹¹, edited from 1932 to 1939 under the editor-in-chief Wacław Makowski^[90, 97].

As an advocate Lemkin took part in an international congress of the International Law Association (ILA), which took place in Budapest on 6-10 September 1934. The Polish delegation was made up of Dr Karol Bertoni (head of the delegation, diplomat, lecturer at Jan Kazimierz University in Lwów), Prof. Julian Makowski, judge of the Supreme Court Jan Namitkiewicz, advocate Alfred Kielski, advocate Tadeusz Kraushar, advocate Roman Kuratowski, advocate Jerzy Rotwand,

⁹ English translation: *The specialisation of a criminal law judge*.

¹⁰ "Voice of the Silesian Lawyers"

¹¹ "Encyclopedia Handbook of criminal law"

counsel of General Counsel to the Republic of Poland Jerzy Rundstein, advocate Jerzy Wittenberg and Edward Neymark^[53, 17].

In 1935 Lemkin took part in the 6th Conference of the International Bureau for the Unification of Criminal Law, which was held in Copenhagen. He gave his lecture on terrorism (the one published in the "Gazeta Sądowa Warszawska")^[86; 87].

On 26-31 July 1937 Lemkin, together with, among others, Rappaport, advocate Antoni Chmurski, Prof. Stefan Glaser and advocate Helena Wiewiórska, took part in the 6th International Congress of Criminal Law organized by AIDP^[92], ignored by the Third Reich. Lemkin gave a lecture entitled *Ochrona pokoju przez prawo karne wewnętrzne*¹², relating to the innovative Polish solutions of the criminal code. Soon after this, in August (4-11 August) Lemkin attended the 2nd International Congress of Comparative Law in The Hague prepared as a grand-scale project with a large group of Polish scholars, and most of all, with great jurists from all over the world. He wrote about this congress on the pages of "Głos Sądownictwa" (no. 10, 1937^[89]). In the next year, in January, he was at the 7th International Conference for the Unification of Criminal Law that was held in Cairo. He gave a lecture on the forgery of passports^[93]. Lemkin also took part in the 1st Criminology Congress in Rome (3-9 August 1938), where he spoke of the judge's role in combating crime^[94], and in the 40th Conference of the ILA in Amsterdam (29 August-2 September 1938). Within the ILA functioned a ten-person

¹² English: *Preservation of peace by means of domestic criminal law.*

Committee of Criminal Law, to which Lemkin aspired – as Szawłowski writes^[53, 17]. The chair had, however, been taken by the head of the faculty of international law in the Ministry of Justice, Lucjan Bekerman. The meetings of the ILA offered an opportunity to establish connections and to observe the fast changes taking place in Europe and lawyers themselves. In December 1938, Lemkin, with Rappaport, took part in an informal meeting of the Bureau for the Unification of Criminal Law^[53, 23].

Besides the international conferences and congresses, Lemkin took part in domestic ones. He continued writing. In 1936 he published a commentary to the Amnesty Act (*Amnestia 1936. Komentarz*)^[88]. Up to 1938 he published three times his commentary to the Fiscal Penal Code^[90]. In 1939, together with Prof. Malcolm McDermott, whom he had met in Poland in 1935, he published in the USA his translation of the Polish Penal (Criminal) Code and the Law of Minor Offences (*Polish Penal Code of 1932 and Law of Minor Offences, 1939*)^[98].

His practice as an advocate led him to abandon for a moment his interest in criminal law. His work published in 1939 in Paris on international payments, entitled *La régulation des paiements internationaux. Traité de droit comparé sur les devises, les clearing et les accords de paiements, Les conflicts de lois* (Paris 1939) with the preface of Marcel Van Zeeland, the director of Bank for International Settlements, may serve as an example^[99]. It was an important change in light of his previous publications, but as it turned out, a very useful one.

THE DEFENSIVE WAR

of 1939, departure from Warsaw...
via Wołkowysk, Wilno, Grodno and
Riga to Stockholm

Lemkin was in Warsaw during the outbreak of World War II. He described the next few weeks in his autobiography, and the blanks in his narration were filled by Ryszard Szawłowski^[53, 25–28]. On 7 September 1939, answering to the call to arms by the leadership of the Polish Army, he travelled eastwards by train. The train was bombed and he had to continue on foot and by horse and cart. He reached Kowel, then – despite being caught by the Soviets – he was released and reached his hometown of Wołkowysk. After a short time he went to Wilno (now Vilnius, Lithuania), where

he met his colleague, an advocate from Warsaw and visited Bronisław Wróblewski – a renowned criminologist and professor of the Stefan Batory University in Wilno. Lemkin said to Prof. Wróblewski, that he will once again make an attempt to raise the notions of „barbarity” and of „vandalism” to the rank of international crimes^[123, 25–78].

From Wilno, overcrowded with refugees, Lemkin sent telegrams to lawyers whom he had met at congresses: Karol Schlyter, former minister of justice of Sweden, the president of the AIDP Carton de Wiart, and the co-author of the above-mentioned translation of the criminal code into English, Prof. McDermott. Probably thanks to their help he quickly got a visa to Sweden. It was stamped in his passport in Kaunas (where he had moved after a short stay in Wilno). Without hesitation, he went to Riga, which was not yet occupied, and he flew from there to Stockholm at the beginning of 1940^[53, 28; 123, 79].



Bronisław Wróblewski (1888–1941), a distinguished Polish criminologist, penologist and legal theoretician

YEAR-LONG STAY

in Sweden

He stayed for over a year in Sweden. Thanks to his work on international payments, which was printed in Sweden as well, he received an invitation from Karl Schylter to give lectures in Swedish on that subject at the University of Stockholm just five months after his move to Sweden^[53, 28–30; 123, 79–97]. The lectures were published in 1941. Lemkin had a unique linguistic talent – he knew Yiddish, Russian, Polish, French, German, English and now, since his arrival in Sweden, Swedish too. Not only did he learn the language and gave lectures, but he also gathered material on German law in the occupied territories and studied the history of the mass killings of populations, including those related to the Mongolian invasion in the

13th century, which enabled him to arrive at the conclusion that Poland was not subject to a genocide for the first time, because in 1241 Mongolian hordes murdered whole cities in a very brutal fashion, which in turn led to settlers being invited from the West. At the beginning of 1941 he was promised a visa to the USA with a proposal of work at Duke University in Durham in North Carolina. He went to Moscow via Riga (and had a short stay there), after that he travelled by train to Vladivostok, next to Japan, from there to Seattle, then to Chicago and finally, by April, he reached Durham (this route was reconstructed by R. Szawłowski on the basis of Lemkin's autobiography and his own research)^[53, 28–30].

USA

– *Axis Rule in Occupied Europe*

At Duke University he taught comparative law and roman law. In the USA he used the name Rafaël. In mid-1942 he left for Washington, where he took the position of the main adviser of the Board of Economic Warfare^[53, 32]. He worked in this post more than two years and studied American law part-time and finished writing a book in which he laid down his conception of genocide, i.e. the famous *Axis Rule in Occupied Europe*, published in New York on November 1944 (in the preface there is a date – 15 November 1943^[107; 124]). Lemkin's work was not received without criticism in the literature. It was seen as an important compilation of information (data about Nazi law, e.g. Hersch Lauterpacht), but the concept of genocide presented in the book was overlooked.

It probably was not always understood. Lemkin's work on "the governments of the Axis states in occupied Europe" was not published in Polish until 2014, and then only in part, as *Rządy państw Osi w okupowanej Europie* (*Axis Rule in Occupied Europe*).

GENOCIDE

and the International Military Tribunal at Nuremberg

After the expiry of the contract, Lemkin became unemployed. When the US President H. Truman nominated the Supreme Court Judge Robert Houghwout Jackson on 2 May 1945 as the representative of the USA for the preparation and prosecution before the International Military Tribunal in Nuremberg, Lemkin instantly sent him a letter with a monthly journal that contained his article entitled *Genocide – a Modern Crime*^[108]. In response, Jackson took Lemkin's *Axis Rule...*^[107] with him to Europe, and its author was offered a job in the Bureau of War Crime in the War Department^[53, 32]. In this way, Lemkin became Jackson's adviser. He flew to London in the summer of 1945. Under

Lemkin's influence a passage can be found in the indictment from 6 October 1945 stating that the accused, "committed knowingly and systematically a genocide, that is a conducted extermination for racial and national reasons of groups of the civilian population on occupied territories." Later Jews, Poles and Gypsies were mentioned^[53, 38]. In view of the fact that the accused were to be held responsible for crimes defined in the Charter of the International Military Tribunal (London 8 August 1945), in article VI, i.e. crimes against peace, war crimes and crimes against humanity (definition of the British lawyer Hersch Lauterpacht – born in a family of Polish Jews in Żółkiew, who - like Lemkin – studied at the University of Lwów.)^[48], in the rulings, however, the term genocide did not appear. Lemkin was in London for around a month and a half. He came back to Europe in the summer of 1946. Earlier, on 20 May 1946, he sent the Secretary General of the UN a letter, where besides introducing himself, he lay down his vision as to the need of an international regulation concerning genocide. He spent the first period in Nuremberg, and later he took part in the first post-war conference of the ILA that took place in Cambridge. Three hundred lawyers took part in it, including a delegation from Poland. Lemkin spoke about genocide, but this topic was noticed by few. He came back to Paris. Then, by sea, he travelled to USA^[53, 40–42].

A LONELY STRUGGLE

for an international law
on genocide: from a resolution
to a convention

A few months later Lemkin intensified his efforts on numerous formal and non-formal meetings for the endorsement of a resolution concerning genocide. He became the consultant of the Legal Committee of the UN. On 11 December 1946 the resolution on genocide was passed unanimously by the UN General Assembly^[53, 42–44; 24, 157–158].

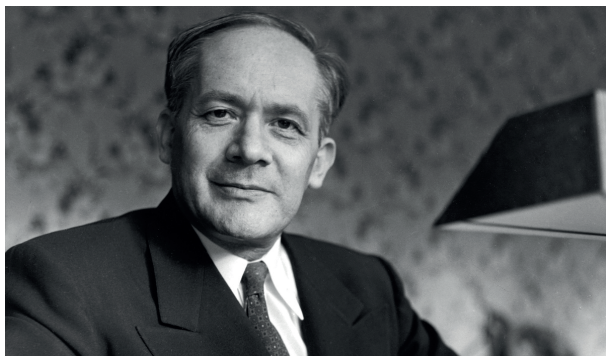
A convention would be the next goal to achieve. He lobbied for it for two years, himself being the main author of its draft (the second was Henri Donnendieu de Vabres). Finally he

succeeded. After a plenary debate on the draft on 9 December 1948 The Convention on the Prevention and Punishment of the Crime of Genocide was unanimously adopted by the United Nations General Assembly. Lemkin had achieved his life goal. In the late hours of 9 December, crying, he stated that the convention is an epitaph on his mother's grave who was murdered by the Germans in Poland, and proof that many millions of people have not died in vain.

According to one relation, on the second day an Italian journalist asked Lemkin when the notion of genocide first came to his mind. He replied, "when I was a child and I read *Quo vadis*, by my compatriot Henryk Sienkiewicz." Although many jurists participated in the final design of the project, it was Lemkin's enormous sacrifice – conducting numerous meetings, correspondence, and lobbying for the convention – that led to the adoption of the convention by the General Assembly of the UN.

In the next few years the convention was ratified by some 150 countries. It entered into force on 12 January 1951 (90 days after it was ratified by the first 20 countries). Lemkin considered that day as a triumph of humanity and one of the best days in his life. Poland ratified the convention on the basis of an Act of parliament of 18 July 1950 on the accession of the Republic of Poland to the convention of 9 December 1948 on the Prevention and Punishment of the Crime of Genocide (*ustawa z 18.07.1950 o przystąpieniu Rzeczypospolitej Polskiej do konwencji z dnia 9*

grudnia 1948 r. o zapobieganiu i karaniu zbrodni ludobójstwa, Dz.U. 1950, Nr 36, poz. 325)¹³, with reservation as to article IX and XII of the convention.



Rafał Lemkin. Photograph from ca. 1948.

¹³ (*Journal of Laws 1950, No 36, item 325*)

LAST YEARS

During the last period of his life, Lemkin made efforts to ensure that the convention would be applied. He opted for the creation of a court able to hear criminal cases of those charged of committing crimes of genocide.

He had chronic health problems, and after he lost his work at Yale University (he worked there until 1951), he was unable to find a regular occupation. He gave many lectures, but they too became less frequent. He did not have any savings and lived in poverty. At the same time, he got involved in publicising all sorts of examples of genocide in the world and urged the USA to ratify the convention^[53, 55]. After the convention had entered into force, he could talk about genocide committed by the Soviets on the conquered nations of Central

and Eastern Europe^[121]. He cooperated with the Polish American Congress, the Congress of Ukrainians in America, and with the *Assembly of Captive European Nations* after its foundation in September 1954. On the first congress of the Assembly in 1954 he delivered his speech alongside Poles like Zygmunt Nagórski and Marek Korowicz. He talked about genocide and of its examples carried out by the Soviets. He spoke out about the genocide carried out by Stalin in Ukraine in 1933 (*holodomor*), but also about other examples of genocide in the world. From time to time he received modest donations from small foundations and from private people. He did not, however, manage to receive any grants. In 1955 he briefly became a law professor at Rutgers University^[53, 58–59].

Despite his difficult situation there were also high points. The Nobel Committee in Oslo received nominations for Lemkin to receive the Nobel Peace Prize from 1950 onwards. Szawłowski established that in the years 1950–1958 there were in total more than twenty of them. He did not, however, receive the Prize. He got a few national distinctions. In 1950 he received a Cuban distinction (the Grand Cross of the Order of *Carlos Manuel de Céspedes* of Cuba), and in 1955 the Order of Merit of the Federal Republic of Germany^[53, 61; 70–71].

Rafał Lemkin, who remained single all his life, died on 28 August 1959 in New York. Only a few people took part in the funeral organized by Maxwell Cohen, a fellow lawyer from New York. He is buried in Mount Hebron Cemetery

in Queens, New York. The inscription on the gravestone is: "Dr Raphael Lemkin (1900-1959). Father of the Genocide Convention"^[53, 72].



Rafał Lemkin's gravestone at Mount Hebron Cemetery in New York

Rafał Lemkin's brother Elias with his wife Lisa and son Saul survived the Holocaust, because in June 1941 they were in Russia. After the war Elias settled in Montreal.



Map of Wołkowysk Pówiat (County) during the Second Polish Republic with the following places marked: Bezwodna (Rafał Lemkin's birthplace), Ozierzyso (the place where he spent his childhood) and Wołkowysk (where he lived with his family during his youth).

POST MORTEM...

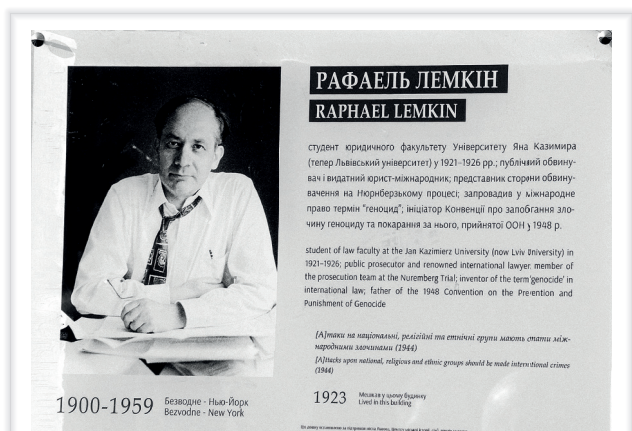
Lemkin was forgotten for many years after his death. He was rediscovered in the 1990s. On February 1991 the first Lemkin symposium on genocide took place at Yale University (Raphael Lemkin symposium on Genocide). The Raphael Lemkin Centenary Conference took place in October 2000 in London.

In later years, many universities decided to create institutes or departments dedicated to genocide. In 2006 two theatre plays about Lemkin were performed in the USA. Since 2000 the Institute for the Study of Genocide in New York issues an award named after Lemkin (the Lemkin Award).

In 2013 the International Award of Rafał Lemkin in Poland was established by the Ministry of Foreign Affairs, but after the first edition, the second one has not yet been proclaimed^[30].



The plaque on the building at 6 Kredytowa Street in Warsaw, where Rafal Lemkin lived and ran his lawyer's office before September 1939; unveiled in 2008 on the initiative of the Polish Institute of International Affairs and Prof. Adam Daniel Rotfeld.



The plaque on the building at 21 Zamarstynowska Street in Lwów, where Rafal Lemkin probably lived as a student in 1923, unveiled on 11 November 2017.

The literature concerning Lemkin has grown immensely (e.g. J.F. Cooper 2008^[21]; I. -E. Douglas, 2017^[24]; P. Sands, 2016^[48]), but still there is no full biography. However, a biography which was recently published by the author of the most extensive biographical work about Lemkin – Ryszard Szawłowski.

Books on Lemkin, published in recent years, re-hash mistakes concerning his life and the legal community of pre-1939 Poland. The works of Lemkin's masters like Juliusz Makarewicz, Wacław Makowski, Emil Stanisław Rappaport, Stanisław Starzyński, Ludwik Ehrlich or Bronisław Wróblewski merit separate biographical studies to be published in English so as to make them better known to international readership.

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Notes

Notes

With the development of international criminal law, including protection against the most severe crimes, came an interest in the life and activity of the man who was the creator of the notion of “genocide” and the main author of the UN Convention on the Prevention and Punishment of the Crime of Genocide of December 9, 1948.

This man was Rafał Lemkin (1900–1959), a Polish jurist, prosecutor and later advocate, alumnus of the Lwów school of criminal law of Juliusz Makarewicz, and lecturer of the Free Polish University in Warsaw; Polish delegate to international criminal law congresses, including the conference of the International Bureau for the Unification of the Criminal Law.



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