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# Genocide

## Raphael Lemkin

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*This article is can also be read in the author's **French** version  
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## **I: "A crime without a name."**

The last war has focused our attention on the phenomenon of the destruction of whole populations -of national, racial and religious groups - both biologically and culturally. The German practices, especially in the course of occupation, are too well known. Their general plan was to win the peace though the war be lost, and that goal could have been achieved through successfully changing the political and demographic interrelationships in Europe in favor of Germany. The population not destroyed was to be integrated in the German cultural, political and economic pattern.

In this way a mass obliteration of nationhoods had been planned throughout occupied Europe. The Nazi leaders had stated very bluntly their intent to wipe out the Poles, the Russians; to destroy demographically and culturally the French element in Alsace-Lorraine, the Slavonians in Carniola and Carinthia. They almost achieved their goal in exterminating the Jews and Gypsies in Europe. Obviously, the German experience is the most striking and the most deliberate and thorough, but history has provided us with other examples of the destruction of entire nations, and ethnic and religious groups. There are, for example, the destruction of Carthage; that of religious groups in the wars of Islam and the Crusades; the massacres of the Albigenes and the Waldenses; and more recently, the massacre of the Armenians.

While society sought protection against individual crimes, or rather crimes directed against individuals, there has been no serious endeavor hitherto to prevent and punish the murder and destruction of millions. Apparently, there was not even an

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adequate name for such a phenomenon. Referring to the Nazi butchery in the present war, Winston Churchill said in his broadcast of August, 1941, "We are in the presence of a crime without a name."

**II: The word "genocide"**

Would mass murder be an adequate name for such a phenomenon? We think not, since it does not connote the motivation of the crime, especially when the motivation is based upon racial, national or religious considerations. An attempt to destroy a nation and obliterate its cultural personality was hitherto called denationalization. This term seems to be inadequate, since it does not connote biological destruction. On the other hand, this term is mostly used for conveying or for defining an act of deprivation of citizenship. Many authors, instead of using a generic term, use terms connoting only some functional aspect of the main generic notion of the destruction of nations and races. Thus, the terms "Germanization," "Italianization," "Magyarization" are used often to connote the imposition by a stronger nation (Germany, Italy, Hungary) of its national pattern upon a group controlled by it. These terms are inadequate since they do not convey biological destruction, and they cannot be used as a generic term. In the case of Germany, it would be ridiculous to speak about the Germanization of the Jews or Poles in western Poland, since the Germans wanted these groups eradicated entirely.

Hitler stated many times that Germanization [p. 228] could only be carried out with the soil, never with men. These considerations led the author of this article to the necessity of coining a new term for this particular concept: genocide. This word is made from the ancient Greek word *genos* (race, clan) and the Latin suffix *cide* (killing). Thus, genocide in its formation would correspond to such words as tyrannicide, homicide, patricide.

**III: An international crime**

Genocide is the crime of destroying national, racial or religious groups. The problem now arises as to whether it is a crime of only national importance, or a crime in which international society as such should be vitally interested. Many reasons speak

for the second alternative. It would be impractical to treat genocide as a national crime, since by its very nature it is committed by the state or by powerful groups which have the backing of the state. A state would never prosecute a crime instigated or backed by itself.

By its very legal, moral and humanitarian nature, it must be considered an international crime. The conscience of mankind has been shocked by this type of mass barbarity. There have been many instances of states expressing their concern about another state's treatment of its citizens. The United States rebuked the government of Czarist Russia as well as that of Rumania for the ghastly pogroms they instigated or tolerated. There was also diplomatic action in behalf of the Greeks and Armenians when they were being massacred by the Turks. States have even entered into international treaties by which they assumed specific obligations in the treatment of their own nationals. We may, in this respect, refer to the treaty entered into between the United States and Spain in 1898, in which the free exercise of religion was assured by the United States to the inhabitants of the territories which were ceded to her.

Another classical example of international concern in the treatment of citizens of other states by their governments is provided by the minority treaties under the auspices of the League of Nations which were signed by a number of European countries after the first World War. Again, the declaration of the Eighth International Conference of American States provides that any persecution on account of racial or religious motives which makes it impossible for a group of human beings to live decently is contrary to the political and judicial systems of America. The Charter of the United Nations Organization also provides for the international protection of human rights, indicating that the denial of such rights by any state is a matter of concern to all mankind.

Cultural considerations speak for international protection of national, religious and cultural groups. Our whole heritage is a product of the contributions of all nations. We can best understand this when we realize how impoverished our culture would be if the peoples doomed by Germany, such as the Jews, had not been permitted to create the Bible, or to give birth to an Einstein, a Spinoza; if the Poles had not had the opportunity to give to the world a Copernicus, a Chopin, a Curie; the Czechs, a Huss, a Dvorak; the Greeks, a Plato and a Socrates; the

Russians, a Tolstoy and a Shostakovich.

There are also practical considerations. Expulsions of law-abiding residents from Germany before this war created frictions with the neighboring countries to which these peoples were expelled. Mass persecutions forced mass flight. Thus, the normal migration between countries assumes pathological dimensions.

Again, international trade depends upon confidence in the ability of the individuals participating in the interchange of goods to fulfill their obligations. The arbitrary and wholesale confiscations of the properties of whole groups of citizens of one state for racial or other reasons deprives them of their capacity to discharge their obligations to citizens of other states. Many American citizens were deprived of the possibility of claiming debts incurred by German importers after these importers were destroyed by the Hitler regime. Finally, genocide in time of peace creates international tensions and leads to war. It was used by the Nazi regime to strengthen the alleged unity and totalitarian control of the German people as a preparation for war.

#### **IV: Creating a legal framework**

Once we have recognized the international implications of genocidal practices, we must create the legal framework for the recognition of genocide as an international crime. The significant feature of international crime is a recognition that because of its international importance it must be punished and punishable through international cooperation. The establishment of international machinery for such punishment is essential.

Thus, it has been recognized by the law of nations and by the criminal codes of many nations that crimes which affect the common good of mankind - as, for example, piracy, unlawful production and trade in narcotics, forgery of money, trade in women and children, trade in slaves - all these are international crimes (*delicta juris gentium*). For such crimes, the principle of universal repression has been adopted, namely the culprit can be punished not only before the courts of the country where the crime has been perpetrated, but also by courts of the country where the culprit can be apprehended if he escaped justice in his own country. For example, a currency forger who committed his crime in Paris and escaped to Prague can be punished validly in

the latter city.

In 1933, at the Fifth International Conference for the Unification of Criminal Law (under the auspices of the Fifth Committee of the League of Nations) the author of the present article introduced a proposal providing for this type of jurisdiction for acts of persecution amounting to what is now called genocide. Unfortunately, at that time, his proposal was not adopted. Had this principle been adopted at that time by international treaty, we would not now have all the discussions about *ex post facto* law, in relation to crimes committed by the German government against its own citizens prior to this war. [p. 229]

## **V: Genocide in time of war**

A ruthless regime finds it easiest to commit genocide in time of war. It then becomes a problem of the treatment, or, rather, mistreatment, of a civilian population by an occupant. The Fourth Hague Convention establishes a rule of law in the protection of civilian populations which an occupant must respect. Within the purview of this law comes the protection of the honor, liberty, life, family rights and property rights of the population in the occupied country.

Genocide can be carried out through acts against individuals, when the ultimate intent is to annihilate the entire group composed of these individuals; every specific act of genocide as directed against individuals as members of a national or racial group is illegal under the Hague Convention. If the killing of one Jew or one Pole is a crime, the killing of all the Jews and all the Poles is not a lesser crime. Moreover, the criminal intent to kill or destroy all the members of such a group shows premeditation and deliberation and a state of systematic criminality which is only an aggravated circumstance for the punishment.

Genocide has been included in the indictment of the major war criminals for the use of the Nuremberg trials. It reads as follows:

They (the defendants) conducted deliberate and systematic genocide - viz., the extermination of racial and national groups - against the civilian populations of certain occupied territories in order to destroy particular races and classes of people, and national, racial or religious groups, particularly Jews, Poles,

Gypsies and others.

By including genocide in the indictment, the enormity of the Nazi crimes has been more accurately described. Moreover, as in the case of homicide, the natural right of existence for individuals is implied: by the formulation of genocide as a crime, the principle that every national, racial and religious group has a natural right of existence is claimed. Attacks upon such groups are in violation of that right to exist and to develop within an international community as free members of international society. Thus, genocide is not only a crime against the rules of war, but also a crime against humanity.

Only after the cessation of hostilities could the whole gruesome picture of genocide committed in the occupied countries be reviewed. During the military occupation unconfirmed rumors about genocide leaked out from behind the iron curtains covering enslaved [p. 230] Europe. The International Red Cross was precluded from visiting occupied countries and gathering information about the mistreatment of the civilian populations. It so happened because the Geneva Convention gave to the International Red Cross the right to supervise and control only the treatment of prisoners of war. A paradoxical situation was created: men who went into the battlefield with a considerable expectancy of death survived, while their families, left behind in supposed security, were annihilated.

The author of the present article has proposed in his book *Axis Rule in Occupied Europe* that international law be changed so that in time of war the treatment of civilian populations will also be under supervisory control of an international body like the International Red Cross. The Swedish newspaper, *Dagens Nyheter*, of November 2, 1945, announced that the chairman of the Swedish Red Cross, Count Bernadotte referred to the author's proposal as acceptable for consideration at a future conference of the International Red Cross, and declared that the Swedish Red Cross would support it. While the writer is gratified by this development, he hopes that other governments will support the proposal to change international law.

## **VI: Proposal for an International Treaty, including the following principles:**

On the basis of the foregoing considerations, the author proposes that the United Nations as they are now organized, together with other invited nations, enter into an international

treaty which would formulate genocide as an international crime, providing for its prevention and punishment in time of peace and war. This treaty, basically, should include, among other things, the following principles:

1. The crime of genocide should be recognized therein as a conspiracy to exterminate national, religious or racial groups. The overt acts of such a conspiracy may consist of attacks against life, liberty or property of members of such groups merely because of their affiliation with such groups. The formulation of the crime may be as follows: "Whoever, while participating in a conspiracy to destroy a national, racial or religious group, undertakes an attack against life, liberty or property of members of such groups is guilty of the crime of genocide."
2. The crime so formulated should be incorporated in every national criminal code of the signatories. The defendants should be liable not only before the courts of the country where the crime, was committed, but in case of escape shall be liable as well, before the courts of the country where they are apprehended.
3. Persons accused of genocide should not be treated as political criminals for purposes of extradition. Extradition should not be granted except in cases where sufficient evidence exists to indicate that the requesting country will earnestly prosecute the culprits.
4. The liability for genocide should rest on those who gave and executed the orders, as well as on those who incited to the commission of the crime by whatever means, including formulation and teaching of the criminal philosophy of genocide. Members of government and political bodies which organized or tolerated genocide will be equally responsible.
5. Independently of the responsibility of individuals for genocide, states in which such a policy obtains should be held accountable before the Security Council of the United Nations Organization. The

Council may request the International Court of Justice to deliver an advisory opinion to determine whether a state of genocide exists within a given country before invoking, among other things, sanctions to be leveled against the offending country. The Security Council may act either on its own initiative or on the basis of petitions submitted by members of interested national, religious or racial groups residing either within or without the accused country.

6. The Hague Convention and other pertinent treaties should be changed to the effect that in case of war, an international body (such as the International Red Cross) should have the right to supervise the treatment of civilian populations by occupants in time of war in order to ascertain whether genocide is being practiced by such occupant.

7. A multilateral treaty for the prevention and punishment of genocide should not preclude two or more countries from entering into bilateral or regional treaties for more extensive protection against genocide. In this connection it is well to note that the Allied Governments in accordance with the Moscow agreements of December, 1945, have decided to enter into formal treaties of peace with the Axis satellite countries Hungary, Bulgaria and Rumania, which practiced genocide in this war according to the German pattern. It is of impelling importance that anti-genocide clauses be included in these treaties.

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