

8. Cabrillac R., Dewez J., Momberg R., Pradera Miguel L.P.S. The duty to renegotiate an international sales contract under CISG in case of hardship and the use of the Unidroit Principles. *European review of private law*. 2011. Vol. 19. Issue 1. PP. 101-154.

УДК 378.4.046:341-052«20»

**Edyta Sokalska**

*dr hab., Law and Administration Faculty  
University of Warmia and Mazury in Olsztyn, Poland*

### **RAFAL LEMKIN AND INTERNATIONAL DISCOURSE ON «GENOCIDE» IN THE FIRST HALF OF THE 20TH CENTURY**

There is no argument that the crime of genocide took place during a lot of wars and armed conflicts, even if the term and concept was not reflected and verbalized in the public consciousness. The recognition of the terminology of this type of crime provoked not only a linguistic dispute, but also resulted in the significant consequences concerning the substance [5, p. 27]. Fascism, World War II and their consequences led to the need to clarify the term, which would have functioned in the documents of international law and would have identified the deliberate destruction of entire national or racial groups as a predetermined method of operation. The number of victims and aggressors' atrocities during World War II had forced the international community to adopt the legislation penalizing genocide.

The conference paper concentrates on introducing one of the Polish lawyers who the large part of his life spent and worked outside Poland. Rafał Lemkin (also known abroad as Raphael Lemkin) was born in 1900 in Bezwodne and died in 1959, in New York. During the inter-war period he worked as a public prosecutor for the District Court of Warsaw. He was also involved in the work of the Committee on Codification of the Laws of the Polish Republic. He was interested in humanization of human relations and international law [7, pp. 209-216].

Foremost Lemkin is recognized as a person who coined the term of «genocide». In 193, he took part in the conference on international criminal law in Madrid and he made a presentation of his essay *Crime of Barbarity* to the Legal Council of the League of Nations. He introduced the «crime of barbarity» as a crime against international law. Later then the concept of that crime evolved into the idea of genocide. In 1937 this lawyer was chosen to the Polish mission to the 4<sup>th</sup> Congress on Criminal Law in Paris. During that conference he put forward the idea of possibility of defending peace through criminal law.

Since 1941, Rafał Lemkin settled in the USA where he worked as a lecturer, but he was also a special adviser on foreign affairs to the US War Department. In 1944, his most important book «Axis Rule in occupied Europe» was published by Carnegie Endowment for International Peace. He presented there the idea of genocide as an offense against international law, which became one of the legal bases of the Nuremberg Trials. Lemkin was the author of a draft resolution for a Convention on the Prevention and Punishment of Crime of Genocide which was adopted on the 9th of December 1948, and became law in 1951. For his work on the area of international law devoted to millions victims of genocide he received few awards and few times was nominated for the Nobel Prize.

According to Professor Eugeniusz Hull, the international legal and political discourse which recognizes the problem of genocide in the context of international relations began on a wider scale with the resolution of the United Nations General Assembly of the 11th December 1946. The resolution defined the crime of genocide according to the international law, and the associated states had the task commission to develop a joint project of the convention [1, p. 105].

Convention on the Prevention and Punishment of the Crime of Genocide was adopted by the United Nations General Assembly on the 9th of December 1948, but it came law in 1951. Unfortunately, Raphael Lemkin was only partially successful, as the definition of genocide proposed by him was limited during the work on the text of the Convention. In the original version of the convention the definition of genocide was to include also crimes committed for political reasons. Despite this, the Convention was a real breakthrough in the international law as it the crime of genocide was passed «under international law, being contrary to the spirit and objectives of the United Nations and condemned by the civilized world (...) international cooperation is necessary to liberate mankind from such an atrocity» [2].

Art. II of the Convention as genocide recognized any of the five acts (namely killing members of the group, causing serious bodily or mental harm to members of the group, deliberately inflicting on the group conditions of life calculated to bring about its total or partial physical destruction, imposing measures intended to prevent births within the group; forcibly transferring children of the group to another) with the intent to destroy whole or partially a national, ethnical, racial or religious group. As punishable acts recognized in the art. III apart from the genocide there was also the direct and public incitement to commit the genocide, direct and public incitement to genocide, attempt and complicity in genocide.

The Convention was followed by other important acts of global significance, as previously mentioned Geneva Conventions of the 12th of August 1949, supplemented by the additional protocols of 1977 and further [3, pp. 1-154; 4, pp. 1-299, 8 pp. 1-618]. The conventions beside the time of war apply also during the occupation and wherever military operations take place, regardless of whether war has been declared

or not. There is no classification of the importance of the armed conflict. Currently, due to their importance, the vast part of the articles of the Convention has the status of common international law [6, pp. 263-276].

In the final decade of the 20th century, there can be seen the further development and „practical application” of the crime of genocide under the international law. It was expressed in the resolutions of the UN Security Council in 1993, by forming the International Criminal Tribunal for the former Yugoslavia, and then in 1994, it was created the International Criminal Tribunal for Rwanda, and on the basis of the international agreement in 1998, it was created the International Criminal Court in The Hague. The Statute of that Court became law in 2002. The crime of genocide was considered as one of the most important crimes that international community should be concerned of. The crime of genocide is recognized in the doctrine and judgments of international criminal courts as «the crime of crimes». These are just some of the activities undertaken in the international arena in order to reduce the crime of genocide, however, only creation of international documents is not sufficient in this respect.

#### REFERENCES:

1. Hull E., *Ludobójstwo – Zagłada w akademickich narracjach historyczno-prawnych*, in: *Ze studiów nad tradycją prawa*, eds. E. Kozerska, P. Sadowski, A. Szymański, Difin, Warszawa 2012, ISBN 978-83-7641-675-5, pp. 103-115.
2. Konwencja ONZ w sprawie zapobiegania i karania zbrodni ludobójstwa 1948 r., *Dziennik Ustaw* 1952, no. 2, pos. 9.
3. Kosińska K., *Zbrodnie ludobójstwa w prawie międzynarodowym*, Dom Wydawniczy Duet, Toruń 2008, ISBN 978-83-611-8526-0.
4. Quigly J.B., *The Genocide Convention: An International Law Analysis*, Ashgate Publishing Company 2006, ISBN 0-7546-4730-7.
5. Sawicki J., *Ludobójstwo. Od pojęcia do Konwencji 1933-1948*, Księgarnia Wydawnicza Dr L.J. Jaroszewski, Kraków 1949.
6. Sokalska E., *Pojęcie genocydu w dyskursie międzynarodowym w I połowie XX w.*, in: *Wojna i Pokój. Wybrane zagadnienia prawno-historyczne*, eds. E. Kozerska, P. Sadowski, A. Szymański Wydawnictwo Uniwersytetu Opolskiego, Opole 2013, ISBN 978-83-7395-570-7, pp. 263-276.
7. Sokalska E., *Wkład Rafała Lemkina w zapobieganie i karanie zbrodni ludobójstwa*, in: *Polska myśl prawnicza w XIX i XX wieku*, eds. P. Majer, M. Seroka, K.M. Wojciechowski, Zakład Poligraficzny UWM w Olsztynie, Olsztyn 2012, ISBN 978-83-6283-19-1, pp. 209-216.
8. Stone D. (ed.), *The Historiography of Genocide*, Palgrave-Macmillan 2008, ISBN 978-1-4039-9219-2.