

# Raphael Lemkin and the international debate on the punishment of war crimes (1919–1948)

DANIEL MARC SEGESSER and MYRIAM GESSLER

When World War I ended in 1918 the issue of the punishment of war crimes was central, not only to many members of the governments of the victorious allies, but also to many jurists who had already worked on the topic during the war.<sup>1</sup> David Lloyd George, Prime Minister of Great Britain at the time, won the election immediately after the end of the war with the slogan “Hang the Kaiser” and Benjamin Clemenceau, Prime Minister of France, insisted that Germany would have to pay for the war and that those responsible not only for war crimes but also for the outbreak of the war would have to be punished. All of this finally resulted in articles 227 to 230 of the Versailles Treaty that were, with the exception of the article relating to the former Kaiser, almost literally also incorporated into the treaties with Austria, Hungary, Bulgaria and the Ottoman Empire. These articles were the work of the so-called Responsibilities Commission set up by the Preliminary Peace Conference<sup>2</sup> and of the council of four, which had decided on the final wording of these articles. Within the commission as well as among the four leading statesmen of the Paris Peace Conference there had been no full agreement on the fact what a war crime exactly was and as to whether the unleashing of a war was to be considered a war crime or not.<sup>3</sup> This was not surprising as the term “war crime,” used for the first time in 1872 by Johann Caspar Bluntschli in his *Modern International Law of Civilised States* to describe the crimes of franc-tireurs in the Franco-German War,<sup>4</sup> had not been frequently used before the beginning of World War I and was therefore only loosely defined. Consequently, the commission set up a list of crimes which it considered as criminal breaches of the laws and customs of war. Amongst them were classical violations of the Hague and Geneva Conventions, but also many crimes that have since been called crimes against humanity, such as massacres, systematic terrorism, deliberate starvation of civilians, enforced prostitution, forced labour of civilians or the internment of civilians under inhuman conditions.<sup>5</sup>

Jurists, publicists, diplomats and members of governments were not able to agree as to what exactly a war crime was. Almost all of them—at least amongst

jurists of allied countries—agreed, however, that war crimes were punishable offences against the laws and customs of war.<sup>6</sup> Most jurists also agreed on the fact that the trials in Leipzig and Constantinople, where a number of alleged war criminals from Germany and the Ottoman Empire had been judged and some of them even found guilty, had been far from satisfactory.<sup>7</sup> It was therefore important that a new way be found to deal with war criminals in the future, a way which would be considered neither victor's justice nor too lenient as in the case of trials in Leipzig and Constantinople, but would be based on a truly international criminal law.<sup>8</sup> It was into this discussion that the young Raphael Lemkin entered, when he began his studies at the law school of the University of Lwow in the newly created state of Poland. According to his own testimony crimes that the list of the responsibilities commission counted among war crimes were one of the reasons for him to choose to study law in general and especially criminal law. Although the persecution of Jews in the western provinces of Tsarist Russia, probably also close to his home town of Bezewodene, would have been close at hand,<sup>9</sup> Lemkin was much more attracted to the fate of the Armenians, this probably due to the publicity given to the Armenians in Russian propaganda during the war. Lemkin's interest in the Armenian question was further raised, at least according to his own testimony, by the trial of Soghomon Tehlirian, who had assassinated the former grand vizier of the Ottoman Empire, Taalat Pasha.<sup>10</sup> All this raises the question as to the development of the international debate on possible future sanctions for war crimes during the interwar period and World War II. It shows how Raphael Lemkin tried to participate in these debates. Lemkin having studied law and criminal law as well as philology<sup>11</sup> raises the question as to how far Lemkin was influenced by the differing methods of law and philology.

### **Raphael Lemkin and the international debate on war crimes in the interwar period**

Already before the failure of the system of Versailles to come to terms with the issue of the punishment of war crimes became clear, there were voices amongst academics who demanded that an international criminal law, which was found to be missing or at least to be incomplete, should be created or improved. In 1920 Maurice Travers, a French jurist and lawyer from Paris, published the first volume of a multi-volume work on international criminal law. He criticized the way the system of Versailles was dealing with the issue of the punishment of war crimes and demanded that a precise legal basis should be laid, before any further trials for war crimes could be held.<sup>12</sup> On a proposal of the Belgian minister of state and professor of natural and international law at the University of Louvain, Édouard Descamps, the Advisory Committee of Jurists of the League of Nations recommended the creation of an international court of justice to deal with crimes constituting a breach of the international public order or the universal law of nations—amongst which Descamps ranked war crimes as well as the crime to wage war.<sup>13</sup> Descamps' proposal had not met with universal approval within the Advisory Committee. Some had criticized that only national courts had the

right to punish such crimes, while others such as Lord Phillimore claimed that only war crimes could be punished, while waging war could not be considered a crime.<sup>14</sup> The Council of the League of Nations wanted to refer the matter to international organizations of law, but the Assembly decided that the time was not yet ripe for the matter, not least because the majority of its delegates believed that there was no such thing as international criminal law.<sup>15</sup>

Although the Descamps resolution, as it later became known, failed, it became the starting point for the debate on the punishment of war crimes in the interwar period. The first to take up the ideas of Descamps was Hugh H. Bellot, a British lawyer and secretary-general of both the International Law Association and the Grotius Society. Bellot, who had actively fought for the idea of the punishment of war criminals during World War I,<sup>16</sup> took up the idea of Lord Phillimore and proposed the creation of an international criminal court to judge war crimes. At the 31st meeting of the International Law Association in Buenos Aires in 1922 he criticized the war crimes trials held in Leipzig as unsatisfactory and claimed that this was due to the fact that the trials had been held in national courts. Further trials in national courts would only lead to conflicting judgements and would always bear the stigma of national prejudice, something which was detrimental to the principle of justice. Therefore, an international criminal court to judge war criminals—but not those responsible for making war—had to be created.<sup>17</sup> Bellot's proposal did not meet with universal approval at the meeting of the International Law Association in Buenos Aires, but a majority of the members present asked Bellot to present a detailed proposal.<sup>18</sup> Bellot submitted his revised proposal, which concentrated on the punishment of war crimes and offences contrary to the laws of humanity, at the 33rd meeting of the International Law Association in Stockholm in 1924. After a lively debate the plenary session of the conference referred Bellot's proposal to an international committee of jurists for redrafting.<sup>19</sup> After a few changes—amongst them a widening of the jurisdiction of the proposed court to other international crimes such as the breaching of international treaties or the violation of punishable international obligations—the proposal was finally accepted by a majority of the members at the 34th meeting of the International Law Association in Vienna in 1926.<sup>20</sup> After the deaths of Hugh Bellot in 1928 and Lord Phillimore in 1929 the activities of the International Law Association on the punishment of war crimes almost came to a standstill. Wyndham Bewes, who succeeded Bellot as secretary-general of the International Law Association, was not able to bring the idea up again in future meetings of the organization and preferred to continue his activities within other frameworks such as the Association Internationale de Droit Pénal.<sup>21</sup>

While English-speaking authors, such as Bellot and Phillimore, had dominated the debate on the punishment of war crimes with their common law background in the early 1920s, the lead passed on more and more to jurists with a legal background dominated by Roman law. Proposals for the punishment of international crimes—amongst them war crimes as well as aggressive war, the abuse of diplomatic privileges, common crimes committed during an occupation or the spreading of false news endangering peace—were made at the meetings of the

Interparliamentary Union in 1924 and 1925 in Berne and Washington, DC. They did, however, not come from English-speaking jurists, but from Rumanian jurist Vespasien Pella, Professor of Criminal Law at the University of Jassy.<sup>22</sup> English-speaking academics began to move away from the issue of the punishment of war crimes—and the crime of making war, if they accepted the existence of such a crime—and concentrated more and more on the outlawry of war without further reference to the issue of punishment.<sup>23</sup> While the debates within the Interparliamentary Union did not make much progress in the years between 1926 and 1931,<sup>24</sup> the debate shifted more and more to jurists, who gathered at meetings of or organized by the Association Internationale de Droit Pénal, an organization largely dominated by specialists of criminal law from France, Belgium, Spain and some of the new Eastern European countries, who were strongly influenced by legal teaching from France.<sup>25</sup> Amongst the leading figures of the Association Internationale de Droit Pénal were Vespasien Pella from Rumania, Henri Donnedieu de Vabres and Jean-André Roux from France, Henri Carton de Wiart from Belgium, Megalos Caloyanni from Greece and Emil Stanislaw Rappaport from Poland. Although they did not all completely agree on all aspects of the punishment of international crimes, their main aim was the same: to create a truly international criminal law which would make it possible to punish international crimes, amongst which aggressive war was for many of them the most important.<sup>26</sup>

Raphael Lemkin finished his legal studies with his doctorate at the University of Lwow in 1926 and the following year began to teach criminal law at the Free University of Warsaw. In 1928 he was appointed prosecuting attorney for Warsaw.<sup>27</sup> In this context Lemkin met Emil Stanislaw Rappaport, Professor of Criminal Law at the Free University of Warzaw and Judge at the Court of Review in Warsaw. Rappaport was the president of the Polish Commission for International Juridicial Cooperation and Vice President of the Association Internationale de Droit Pénal.<sup>28</sup> The collaboration of the two men resulted amongst other things in the new Polish Criminal Code of 1932 and the publication of a commentary on the new law together with Janusz Jamontt.<sup>29</sup> They were also both interested in comparative criminal law as the publication lists of the two men show.<sup>30</sup> It is therefore not surprising that Lemkin also joined the Polish Commission for International Juridicial Cooperation and the Association Internationale de Droit Pénal at some time after 1927.<sup>31</sup> He was not a very active member of these two organizations, but it seems clear from all indications available that he supported the main line taken by Pella and Rappaport to find ways to punish international crimes—among them especially aggressive war—by way of international criminal law, an international criminal court or national criminal legislation.<sup>32</sup>

In 1927 the Polish Commission for International Juridicial Cooperation organized the first international conference for the unification of criminal law in Warsaw. The proposal for such a conference had come at the first general meeting of the Association Internationale de Droit Pénal from Pella, who became the secretary-general of the conference, which was in turn presided over by Rappaport. At least officially Lemkin did not participate in the conference, but it is nevertheless possible that he attended some of the meetings.<sup>33</sup> The

conference discussed a number of topics of criminal law and international criminal law. In this context Rappaport and the Polish Commission for International Juridical Cooperation proposed that not only aggressive war, but also the propaganda for aggressive war should be considered an international crime and that the Warsaw Conference should name a commission to make proposals for a possible implementation of the proposal on the diplomatic level.<sup>34</sup> The conference accepted Rappaport's proposal. Amongst other things it also discussed the issue of *delicta juris gentium* and declared the offences of piracy, counterfeiting of coins, trade in slaves, trade in women and children, intentional use of instruments capable of producing public danger, trade in narcotics and traffic in obscene publications, crimes punishable anywhere under the principle of universal jurisdiction.<sup>35</sup> At the following international conferences for the unification of criminal law in Brussels in 1930 and Paris in 1931 the issue of the intentional use of instruments capable of producing public danger was again taken up. Some delegates from Eastern European countries proposed to subsume acts of terrorism under this heading, but others, amongst them Rappaport and Lemkin, opposed such a decision. Finally, the conference of Paris decided to refer the issue to a commission, which included Lemkin as one of its members.<sup>36</sup> The commission presented its findings at the fifth international conference for the unification of criminal law in Madrid in 1933. A first report was presented by Jean-André Roux, the secretary-general of the Association Internationale de Droit Pénal. He proposed to concentrate on the aspect of terrorism and to try to fix minimal penalties in national criminal law for this offence.<sup>37</sup> Lemkin did not agree with Roux. In his report submitted to the conference of Madrid he pointed to the fact that it was not only necessary to fight terrorism on an international level, but that there were other crimes that had to be dealt with by means of the principle of universal jurisdiction, a principle promoted by Pella, Donnedieu de Vabres and Rappaport.<sup>38</sup> To Lemkin it was clear that the principle of universal jurisdiction could not be applied to all violations of international law. Only violations that were considered "so particularly dangerous as to present a threat to the interests, either of material nature or of a moral nature, of the entire international community"<sup>39</sup> could be considered crimes that should be judged anywhere according the principle of universal jurisdiction. Lemkin then referred to the decisions taken by the international conferences for the unification of criminal law in Warsaw, Brussels and Paris and pointed to the fact that terrorism did not constitute a legal concept, but rather embraced a large variety of different criminal acts. Lemkin therefore pleaded for a return to the original concept of the intentional use of instruments capable of producing public danger, which was to include acts of barbarity, acts of vandalism, provocation of catastrophes in and international interruption of international communications as well as the propagation of human, animal or vegetable contagions. Further into his proposal Lemkin also pointed to violations of human rights, acts of extermination and the destruction of culture and works of art as violation, which had to be punished everywhere independently of the location of such acts. Lemkin proposed an international convention to ensure the repression of all these offences.<sup>40</sup>

In the debate on the reports of Roux and Lemkin the former proposed to concentrate on the issue of terrorism, because it had become a crime of an international dimension and because it was not clear whether the intentional use of instruments capable of producing public danger could really be considered delicts in terms of international criminal law.<sup>41</sup> Lemkin's report was therefore dropped from the agenda of the commission and not taken up in the full meetings of the conference. From the official documents of the conference it seems that Lemkin was not personally present at the conference, which may be one of the explanations why there was almost no opposition to dropping Lemkin's report. Rappaport, who was unable to attend the meetings of the commission dealing with the reports of Roux and Lemkin, did not voice any criticism to the dropping of Lemkin's report, although he had been critical of the proposals made at Brussels and Paris. Probably this was due to the moderate version of the proposals the commission made in relation to terrorism.<sup>42</sup> Lemkin did not take up the subject again before the beginning of World War II, probably also because of the fact that terrorism became the dominant topic within the Association Internationale de Droit Pénal and the League of Nations after the murder of Yugoslav King Alexander and French Foreign Minister Louis Barthou in Marseilles on October 9, 1934.<sup>43</sup> Although the Association Internationale de Droit Pénal had already set up a commission of which Rappaport was a member, to deal with the issue,<sup>44</sup> the League of Nations decided to set up its own commission, which was, however, presided over by the president of the Association Internationale de Droit Pénal, Henri Carton de Wiart. Furthermore, Vespasien Pella was elected reporter of the commission and prepared several drafts for a convention for the international repression of terrorism and the creation of an international criminal court.<sup>45</sup> The draft conventions that were finally adopted by an international conference in 1937 did, however, not nearly go as far as Pella originally would have wished and neither included the crime of aggressive war nor war crimes, as they had been defined by the responsibilities commission in Versailles and accepted by Pella in 1925.<sup>46</sup>

Although Lemkin and Rappaport participated at the sixth international conference for the unification of criminal law, which dealt with the issue of terrorism in Copenhagen in 1935,<sup>47</sup> neither of them took a prominent part in the formulation of the conventions for the repression of terrorism and for the creation of an international criminal court. Nor did Poland sign any of the conventions, although it had been represented at the conferences by Tytus Komarnicki and Lucien Bekerman.<sup>48</sup> Neither Rappaport nor Lemkin came back to the issues of aggressive war or acts of barbarism, before the beginning of World War II. While Rappaport became a victim of the German crimes in Poland and would therefore not come back to the issue before the end of the war, Raphael Lemkin became involved in the American efforts to pursue the war criminals of the new world war.<sup>49</sup>

## **The debate on the punishment of war crimes during World War II**

When in September 1939 the German forces attacked Poland Raphael Lemkin was drafted into the Polish Armed Forces and wounded. He nevertheless managed to

escape first to Lithuania and then to Sweden, where he lectured for 18 months at the law faculty of the University of Stockholm, mainly on the topic he had been dealing with lately, finance law. At the same time he began to collect German laws and decrees with respect to subject peoples and accumulated hundreds of papers, which would later form the core of the documentation of his study *Axis Rule in Occupied Europe*. Early in 1941 he was offered a contract with the law school of Duke University, not least due to his friendship with Professor Malcolm McDermott, whom he had met when the latter was serving as visiting scholar at the universities of Warsaw and Cracow. Travelling through the Soviet Union Lemkin finally arrived in the United States in the late summer of 1941.<sup>50</sup>

Although the war had not cut off his relationship with McDermott, he had lost contact with all those with whom he had worked in the interwar period. Rappaport had remained in Poland and was therefore not able to continue his work. Vespasien Pella was in Rumania, an ally of Hitler Germany, and did also not contribute any further studies to the issues of war crimes and aggressive war before the end of the war. The same was also true of Henri Donnedieu de Vabres, who remained in Vichy France after the fall of Paris in 1940. The net of the Association Internationale de Droit Pénal had broken down with the beginning of the war, not to be restored before 1945/1946.<sup>51</sup> Others began to dominate the debate on the punishment of war crimes, which from the beginning did not only concentrate on the classical war crimes, but also on aggressive war and crimes that would later be called crimes against humanity. It was, however, only after the fall of France that the debate really began, although German barbarities in Poland became known to the public in France and Britain from the beginning of the war in 1939. Ernst Joseph Cohn, an exiled German academic, who lived and taught in Britain, was one of the first to address the issue of the punishment of war crimes. He called for war crimes trials in the countries of the victims, while opposing the inclusion of violations of international obligations—such as aggressive war in violation of the Briand–Kellogg treaty—into the category of war crimes, because such a proposal was “too far from practical politics and constitutes therefore an unnecessary burden for the whole plan.”<sup>52</sup> Others disagreed with Cohn. The London International Assembly, an unofficial body of scholars created under the auspices of the League of Nations Union by Viscount Robert Cecil and other academics, such as Hans Kelsen and Albert Levy, stressed the fact that aggression was considered an international crime and that therefore the authors of the war had to be punished.<sup>53</sup> Others, such as Sheldon Glueck or George A. Finch, agreed with Cohn and argued against trials for the aggressors under international law, contending that the effort would only confuse the much clearer issue of liability for classical war crimes committed during the war.<sup>54</sup> On the other hand, Glueck and to a lesser degree also Finch argued that not only crimes in contravention to the Hague and Geneva Conventions should be punished, but also crimes such as mass slaughter, the crimes against the Jews and generally speaking all violations of the principles of criminal law observed in civilized states.<sup>55</sup> This view was also supported by other jurists such as Manfred Lachs from the University of Cracow, Georg Lelewer, an exiled Austrian

specialist on military law, Vaclav Benes, the nephew of the exiled president of Czechoslovakia, or Aaron Naumovitch Trainin, Professor of Criminal Law at the University of Moscow.<sup>56</sup> Further topics discussed amongst jurists were the problems of the jurisdiction for the punishment of war crimes (and possibly further war-related crimes), of superior orders, of the principle of *nullum crimen, nulla poena sine lege* or of the legitimacy of the aerial bombardment of civilian centres.<sup>57</sup>

There were of course different levels on which the debate took place. While government leaders were reluctant to take up the issue due to the fear of reprisals against their prisoners of war, some members of Parliament, especially in Great Britain, tried to bring it up in their respective chambers. Unofficial bodies such as the London International Assembly and the International Commission for Criminal Reconstruction and Development played an important role as well. The most important body, however, was the United Nations War Crimes Commission, which was finally created in 1943, almost a year after its creation had been announced.<sup>58</sup> Furthermore, leading journals especially in the fields of international law, criminal law and political science as well as some books published by important authors such as Hans Kelsen, Sheldon Glueck or Aaron Naumovitch Trainin played an important role, especially in order to press certain points upon which no decision had yet been reached.<sup>59</sup> There was an almost general agreement amongst all the authors that those responsible for war crimes had to be punished. Only very few authors were sceptical and criticized the idea of war crimes trials.<sup>60</sup>

### **Raphael Lemkin and the issue of war crimes and genocide, 1940–1945**

Soon after Raphael Lemkin's arrival in the United States the country found itself involved in war as a consequence of the Japanese attack on Pearl Harbour. This changed Lemkin's situation dramatically, having been called by the US Army to teach classes on military government at Charlottesville, Virginia. Furthermore, the Board of Economic Warfare drafted him as a consultant. Lemkin never joined the international debate on the punishment of war crimes before 1945, probably because of his heavy workload, the fact that he had lost his scholarly network and his determination to publish the documentation he had been collecting since the beginning of World War II.<sup>61</sup> In 1944 his book *Axis Rule in Occupied Europe* was finally published and welcomed by most reviewers as a stunning indictment of the crimes committed by all Axis governments and military during the war.<sup>62</sup>

When the Division of International Law of the Carnegie Endowment of International Peace decided to publish Lemkin's book, it did so with the aim on the one hand to show the differences between the occupation policy of the Allies and that of the Axis powers, not least by quoting American occupation laws of the past. On the other hand, the Carnegie Endowment wanted to give the "liberators of Nazi-occupied Europe" an idea of possible modes and agencies of redress in order to repair the damage that had been done to persons and property. Only after such a reparation had been done could a peaceful world founded upon law and order be rebuilt.<sup>63</sup> Lemkin was convinced that many of his potential readers were inclined to believe that the Axis regimes could not possibly be as



cruel and ruthless as they had been told so far. It was therefore important to show the readers that the occupation of large parts of Europe had been marked by grave outrages against humanity and international law as well as against human rights, morality and religion and that the occupants had not even refrained from using law to commit their crimes. The publication of a collection of occupation laws was essential, Lemkin believed, for a clear understanding of the Axis regimes.<sup>64</sup> To a large extent Lemkin's book was therefore a collection of those laws and decrees, which he had collected from the time he had arrived in Sweden. It was supplemented by a synthesis of the techniques of occupation and an analysis of the regime in each occupied country. Although Lemkin made it clear that he would also deal with the other Axis countries, his main focus was on Germany, since this country had been and was the leader and main organizer of what Lemkin called a system of occupation, to which the reader was introduced in the first part of Lemkin's book. Dealing with administration, police, law, property, finance and labour, Lemkin wanted to show his reader how the German authorities had organized their occupation of large parts in violation of international law and that, following the example set by Bethmann-Hollweg in 1914, they had used a unilaterally utilitarian conception of law—law is what is useful to the German nation—to give the impression of a legal behaviour.<sup>65</sup>

In the major part of the first section of his book Lemkin continued to work along the lines that had dominated the interwar debate in the Association Internationale de Droit Pénal. He not only discussed crimes committed as part of an occupation policy by the police or military authorities as most other authors did, but he also included aspects of property, finance and labour, which were not commonly discussed when dealing with the possible punishment of crimes committed during the war. At that point of his analysis, however, Lemkin introduced a new concept, which would influence not only the debate of the years to come on international law, but also on political and social science as well as on history.<sup>66</sup> Starting out by saying that “new conceptions require new terms,”<sup>67</sup> Lemkin introduced the term “genocide” and then went on to describe techniques of genocide in various fields. Of course Lemkin did not claim to introduce a new category of crime. His aim was rather to include a number of crimes that had so far been described by various terms into one category. He therefore referred to the work of several authors of the past such as James Wilford Garner's study on *International Law and the World War* or the report of the Responsibilities Commission of the Paris Peace Conference as well as his proposal of 1933,<sup>68</sup> but he refrained from mentioning any occurrence of genocide in the past apart from wars of extermination that for Lemkin had ended at the latest with the Thirty Years' War.<sup>69</sup> Lemkin's focus was clearly on the crimes he was documenting in the third part of his book and he recommended that the proposal he had made in 1933 should be taken up again and genocide be prohibited by an international treaty as well in time of war as in time of peace. Lemkin did not call for an international criminal court to punish genocide, but rather demanded an agency vested with specific powers—which Lemkin did not specify—to make sure that genocide and other crimes of occupation would be prevented in the future. National courts should,

however, be competent to try offenders for genocide according to the legal principle of universal jurisdiction.<sup>70</sup> In his book Lemkin does not give any reasons for his introduction of the term genocide. At the beginning of his chapter on genocide he said that new conceptions require new terms, but later on made it clear that the concept was not really as new as he claimed at the beginning. Although there is no final proof, the authors of this article believe that it may be that Lemkin decided to introduce the concept of genocide not least because he was aware of the fact that it would be difficult to demand the prevention and punishment of such a crime, if it was just included amongst others under the heading of the intentional use of instruments capable of producing public danger that had been used in the debate within the Association Internationale de Droit Pénal and International Conferences for the Unification of Criminal Law.

The second part of Lemkin's *Axis Rule in Occupied Europe* contains studies of occupation of 17 countries or part of countries. In these chapters Lemkin gives an overview of the administration, the judiciary, criminal law, issues dealing with private property, public finance, labour and genocide legislation.<sup>71</sup> In his third part, which makes up more than half of the book, Lemkin then publishes documents relating to the laws of occupation, i.e. statutes, decrees and other legal documents, all listed by countries in which they were published.<sup>72</sup> The issue of the punishment of those responsible is almost not touched upon in Lemkin's book, because he believed that he would not be able to address the issue exhaustively. To Lemkin there was more to redress than just the punishment of those responsible for international crimes, as there were many political, economic, legal and moral considerations that would need to be addressed in this context. Hitler and the Nazis were not the only ones responsible for the gruesome crimes committed during the German and Axis Occupation of Europe. The German people voluntarily assisted Hitler in the scheme of world domination. Therefore, the United Nations would be faced with the tremendous task of destroying what Lemkin called an "amalgamation of master-race mythology and aggressive technology."<sup>73</sup> For Lemkin, whose plan for a post-war Germany went even further than the ideas of the Henry Morgenthau,<sup>74</sup> it was clear that the aggressive industrial potential of the German economy had to be reduced and transformed into a more peaceful economic pattern marked by agriculture combined with a new theory of master morality, international law and true peace.<sup>75</sup> Although Lemkin came up with the new concept of genocide, the main aim of his study was not conceptual, legal or historical. In its major parts it was a documentation of the legal background of the crimes committed by Axis government members and military forces during World War II. Although Lemkin was a lawyer by training he did not speak much about the legal consequences of the crimes committed by Axis leaders, officers and soldiers. Trials for war crimes or for genocide were not on Lemkin's agenda in *Axis Rule in Occupied Europe*. Neither was the book meant to be an analysis of genocide in its historical or legal context. Lemkin's main aim was to document the crimes that had been committed during World War II, not least in order to use them later on as the basis for his further work on international criminal law, which he assumed he would resume at the end of the war.

### **Nuremberg and the genocide convention**

Towards the end of the war the international debate on the punishment of war crimes centred on the question as to whether the main German war criminals were to be punished by summary execution—a plan supported by Churchill and Morgenthau—or by way of a trial before an international criminal court of whatever sort—a plan, which had the support of the majority of academics as well as of the American Secretary of State for War, Henry Stimson.<sup>76</sup> Lemkin only joined the debate when the decision to hold war crimes trials had almost been taken. He argued that Hitler and his associates were just common criminals that had to be tried in allied military courts.<sup>77</sup>

Although the Allies had finally agreed on the principle of war crimes trials in April 1945, there was much work ahead in setting up such trials. In America Supreme Court Justice Robert H. Jackson was named head of the American delegation for a conference in London in August 1945, where the Allies finally agreed on a charter for an International Military Tribunal.<sup>78</sup> Lemkin, who had successfully influenced the American delegation's view on the concept of criminal organizations,<sup>79</sup> joined the American prosecution team for the war crimes trials in Nuremberg and became one of the legal advisors to US Chief Prosecutor Jackson. Lemkin continued to work hard and hoped to have the concept of genocide included into the indictment against the major war criminals, as the British delegation had allegedly opposed the concept in London, saying that it was not found in the Oxford Dictionary.<sup>80</sup> Lemkin succeeded this time,<sup>81</sup> but the court did not take up the concept in its verdict, which was a great disappointment for Lemkin.<sup>82</sup> His determination to get his concept inscribed in international law was, however, not broken. Already in spring 1946 he published an article in the *American Scholar*, in which he tried to explain why it was necessary to introduce the concept of genocide into international criminal law and to set up an international convention for the prevention and punishment of genocide.<sup>83</sup> Furthermore, he tried to renew his contacts with the Association Internationale de Droit Pénal and published two articles in a special number of the association's journal devoted to the future of international criminal law after World War II.<sup>84</sup> His aim now was to show the people concerned that genocide was a danger for peace and that it exerted "an immediate and direct detrimental effect upon countries other than those in which it is practiced."<sup>85</sup> In the consequence he worked very hard within the United Nations to have genocide accepted as an international crime and to set up an international convention on the prevention and punishment of genocide. On December 9, 1948, Lemkin finally reached his aim, when the UN General Assembly accepted the convention by a unanimous vote.<sup>86</sup>

### **Conclusions**

When in 1945 the major German war criminals were put on trial at the International Military Tribunal, the charter of the tribunal as well as the indictment

were concerned with three crimes: crimes against peace, war crimes and crimes against humanity. All three of these categories had been discussed in the interwar period and Raphael Lemkin had participated in this debate both as member of the Polish Commission for International Juridical Cooperation and the Association Internationale de Droit Pénal. On the one hand, Lemkin joined the call of Vespasien Pella and his colleague Emil Stanislaw Rappaport to create instruments to punish aggressive war as well as the propaganda for aggressive war on an international level according to the legal principle of universal jurisdiction. On the other hand, both Rappaport and Lemkin were rather sceptic when the conferences for the unification of criminal law in Brussels and Paris tried to narrow the concept of the intentional use of instruments capable of producing public danger to acts of terrorism. Only Lemkin, however, presented an alternative proposal. After this proposal had been defeated neither Lemkin nor Rappaport participated in the efforts of the Association Internationale de Droit Pénal to set up conventions for the prevention of terrorism and the creation of an International Criminal Court. World War II separated the two men that had worked together for about a decade. While Rappaport remained in occupied Poland, Lemkin escaped to the United States. During the war it was Lemkin's aim to collect as much information as possible on the German system of occupation. On the one hand, Lemkin's aim was legal, as he believed that Hitler and his associates had to be punished as common criminals. His documentation was meant to support any indictment brought up in this context. Lemkin, however, also believed that the German crimes had to be documented for history, in order to prevent such crimes from happening again in the future and in order to work as an argument for the future codification of international criminal law. Lemkin's work was therefore the work of a lawyer and a philologist at the same time. It is in this context that Lemkin developed the concept of genocide. Whether this was done on purpose or by accident is not quite clear, but Lemkin had created a new and powerful catchword for jurists as well as for philologists. After the UN General Assembly had voted the Genocide Convention, Lemkin was found with tears in his eyes in the Assembly chamber, to a large extent probably because of his family that had been killed during the Holocaust.<sup>87</sup> Perhaps there was another reason: Lemkin seemed to have reached his aim and finally it was the concept of genocide that was taking the place of the concept of the intentional use of instruments capable of producing public danger formulated at the Warsaw Conference of 1927. Genocide now seemed to take the place as the most dangerous crime, a place that in the debate on international criminal law of the interwar period had first been occupied by the issues of war crimes and aggressive war and then by the concept of terrorism.

## Notes and References

- 1 Daniel Marc Segesser, "The international debate on the punishment of war crimes during the Balkan Wars and the First World War," *2004 Annual Meeting Session Papers of the American Historical Association* (Ann Arbor: UMI, 2004).

- 2 For its report, see: Commission on the Responsibility of the Authors of the War and the Enforcement of Penalties, "Report presented to the Preliminary Peace Conference," *American Journal of International Law*, Vol 14, 1920, pp 95–154.
- 3 Gary Jonathan Bass, *Stay the Hand of Vengeance: The Politics of War Crimes Tribunals* (Princeton: Princeton University Press, 2000), pp 75–80, 83–88, 135–136; James F. Willis, *Prologue to Nuremberg: The Politics and Diplomacy of Punishing War Criminals of the First World War* (Westport, CT: Greenwood Press, 1982), pp 65–86, 177–181.
- 4 Johann Caspar Bluntschli, *Das moderne Völkerrecht der civilisirten Staaten*, 2nd edn (Nördlingen: Beck'sche Buchhandlung, 1872), pp 358–359.
- 5 Commission on the Responsibility, op cit, pp 114–115; United Nations War Crimes Commission (hereafter UNWCC), *History of the United Nations War Crimes Commission* (London: HMSO, 1948), pp 34–35. On the terminology, see: Gerry J. Simpson. "War crimes: a critical introduction," Timothy L. H. McCormack and Gerry J. Simpson, eds, *The Law of War Crimes: National and International Approaches* (The Hague: Kluwer Law International, 1997), pp 1–30; Howard S. Levie, "Violations of human rights in time of war as war crimes," Yoram Dinstein and Mala Tabory, eds, *War Crimes in International Law* (The Hague: Martinus Nijhoff, 1996), pp 123–127; M. Cherif Bassiouni, *Crimes Against Humanity in International Criminal Law*, 2nd revised edn (The Hague: Kluwer Law International, 1999), pp 60–82.
- 6 Segesser, op cit.
- 7 On the Leipzig trials, see: Gerd Hankel, *Die Leipziger Prozesse: Deutsche Kriegsverbrechen und ihre strafrechtliche Verfolgung nach dem Ersten Weltkrieg* (Hamburg: Hamburger Edition, 2003). On the trials in Constantinople, see: Taner Akçam, *Armenien und der Völkermord: Die Istanbul Prozesse und die türkische Nationalbewegung* (Hamburg: Hamburger Edition, 1996).
- 8 Hans-Heinrich Jescheck, *Die Verantwortlichkeit der Staatsorgane nach Völkerstrafrecht: Eine Studie zu den Nürnberger Prozessen* (Bonn: Ludwig Röhrscheid Verlag, 1952), p 89. A closer analysis of the debate will be included into the forthcoming Habilitationsschrift of Daniel Marc Segesser on the international debate on the punishment of war crimes, 1872–1945.
- 9 On the Russian persecution of Jews during their retreat from advancing German forces, see: Peter Gatrell, *A Whole Empire Walking: Refugees in Russia during World War I* (Bloomington: Indiana University Press, 1999), pp 16–26; Mark Levene, "Frontiers of genocide: Jews in the Eastern war zones, 1914–1920 and 1941," in Panikos Panayi, ed., *Minorities in Wartime: National and Racial Groupings in Europe, North America, and Australia during the Two World Wars* (Oxford: Berg, 1993), pp 92–98; Ulrich Sieg, "Judentum," in Gerhard Hirschfeld, Gerd Krumeich and Irina Renz, eds, *Enzyklopädie Erster Weltkrieg* (Paderborn: Schöningh, 2003), p 599.
- 10 New York Public Library: Raphael Lemkin Papers 1947–1959, Series V: Writings—Autobiography, pp 17–18. See also Steven L. Jacobs. "Lemkin and the Armenian genocide," in Richard G. Hovannisian, ed., *Looking Backward, Moving Forward: Confronting the Armenian Genocide* (New Brunswick: Transaction, 2003), p 126, and Gatrell, op cit, pp 150–154.
- 11 William Korey: "Raphael Lemkin: 'the unofficial man,'" *Midstream*, Vol 35, No 5, 1989, p 46.
- 12 Maurice Travers, *Le Droit Pénal International et sa Mise en Oeuvre en Temps de Paix et en Temps de Guerre*, 5 vols (Paris: Recueil Sirey, 1920–1922), Vol 1, pp 61–66 and Vol 4, pp 618–619.
- 13 See Document 4a in Benjamin B. Ferencz, *An International Criminal Court: A Step toward World Peace—A Documentary History and Analysis*, 2 vols (London: Oceana, 1980), Vol 1, pp 193–224; Jescheck, op cit, p 90; Heiko Ahlbrecht, *Geschichte der völkerrechtlichen Strafergerichtsbarkeit im 20. Jahrhundert* (Baden-Baden: Nomos-Verlagsgesellschaft, 1999), pp 46–47.
- 14 Ferencz, op cit, pp 202–210; Jescheck, op cit, pp 90–91.
- 15 Ahlbrecht, op cit, p 48; Ferencz, op cit, pp 239–243; Jescheck, op cit, p 91.
- 16 Hugh H. Bellot, "War crimes and war criminals," *Canadian Law Times*, Vol 36, 1916, pp 754–768, 876–886; *ibid*, "War crimes and war criminals," *Canadian Law Times*, Vol 37, 1917, pp 9–22; *ibid*, "War crimes: their prevention and punishment," *Transaction of the Grotius Society*, Vol 2, 1917, pp 31–55; *ibid*: "War crimes, their prevention and punishment," *Nineteenth Century and After*, Vol 80, 1916, pp 636–660.
- 17 Hugh H. Bellot, A Permanent International Criminal Court, International Law Association, *Report of the Thirty-First Conference (Buenos Aires 24th August–30th August 1922)* (London: Sweet&Maxwell, 1923), pp 63–80.
- 18 Bellot, op cit, pp 80–86.
- 19 Amongst the critics of Bellot were Graham Bower, Charles-Henry Butler, Ludwik Erlich, John Hinkley and John Fischer Williams, as well as James Leslie Brierly, who although present did not voice his criticism in Stockholm. International Law Association, *Report of the Thirty-Third Conference (Stockholm September 8th to 13th, 1924)* (London: Sweet&Maxwell, 1925), pp 93–110 and James Leslie Brierly, "Do we need an International Criminal Court?" *British Yearbook of International Law*, Vol 8, 1927, pp 81–88.

- 20 International Law Association, *Report of the Thirty-Fourth Conference (Vienna August 5th to 11th, 1926)* (London: Sweet&Maxwell, 1927), pp 106–225, 279–309; Hellmuth von Weber: *Internationale Straferichtsbearbeitung* (Berlin: Ferd. Dümmlers Verlag, 1934), pp 11–14; Jescheck, op cit, pp 93–97.
- 21 Jescheck, op cit, pp 97, 113–114; Weber, op cit, p 14.
- 22 Ahlbrecht, op cit, pp 49–50; Jescheck, op cit, pp 112–113; Weber, op cit, p 47.
- 23 Jescheck, op cit, pp 74–75. See also: Quincy Wright, “The outlawry of war,” *American Journal of International Law*, Vol 19, 1925, pp 76–103 and Vilho Harle, “The implementation of peace ideas: the case of outlawry of war,” *History of European Ideas*, Vol 10, 1989, pp 677–688.
- 24 Ahlbrecht, op cit, p 50; Jescheck, op cit, p 113.
- 25 Jescheck, op cit, p 97; Association Internationale de Droit Pénal, “Projet d’une Association Internationale de Droit Pénal,” *Revue Internationale de Droit Pénal* (hereafter *RIDP*), Vol 1, 1924, pp 1–2.
- 26 For an overview, see: Jescheck, op cit, pp 97–110 and Weber, op cit, pp 14–47. A more detailed analysis of the debate will be given in the forthcoming Habilitationsschrift of Daniel Marc Segesser on the international debate on the punishment of war crimes, 1872–1945.
- 27 Korey, op cit, p 46.
- 28 Georges Sliwowski, “Le Président Emile Stanislas Rappaport,” *RIDP*, Vol 36, 1965, pp 13–19; Alojzy Zebrowska, “Rappaport Emil Stanislaw,” in *Polski Słownik Biograficzny*, Vol 30 (Wrocław: Zakład Narodowy Imienia Ossolinskich Wydawnictwo Polskiej Akademii Nauk, 1987), pp 586–589.
- 29 Janusz Jamontt, Raphael Lemkin and Emil Stanislaw Rappaport, eds, *Kodeks Karny r. 1932*, 2 vols (Warsaw: Biblioteka Prawnicza, 1932).
- 30 For Lemkin, see: [www.preventgenocide.org/lemkin/bibliography.htm](http://www.preventgenocide.org/lemkin/bibliography.htm) (November 11, 2004), for Rappaport, see: Sliwowski, op cit, pp 15–17.
- 31 It is not clear when Lemkin exactly joined the two organizations, but in 1930 he already occupied the position of secretary to the Polish Commission for Criminal Legislation. Simon Sasserath, ed., *Actes de la IIIe Conférence Internationale pour l’ Unification du Droit Pénal (Bruxelles, 26–30 Juin 1930)* (Brussels: Office de Publicité, 1931), p 11.
- 32 There is only one article in which Lemkin himself discussed part of this problem, but there are no indications that he disagreed with Pella and Rappaport: Raphael Lemkin, “La Protection de la Paix par le Droit Pénal Interne,” *RIDP*, Vol 35, 1938, pp 95–126.
- 33 Michel Potulicki, ed., *Actes de la Ière Conférence d’ Unification du Droit Pénal (Varsovie, 1er–5 Novembre 1927)* (Paris: Librairie du Recueil Sirey, 1929), pp 1–7.
- 34 Potulicki, op cit, pp 38–41.
- 35 Potulicki, op cit, pp 59–67, 116–130.
- 36 Sasserath, op cit, pp 43–48, 114–117, 173–175, 194; Henri Donnedieu de Vabres, ed., *Actes de la IVe Conférence Internationale pour l’ Unification du Droit Pénal (Paris, 27–30 Décembre 1931)* (Paris: Librairie du Recueil Sirey, 1933), pp 48–68, 133–152, 253–264.
- 37 Jean-André Roux, “Terrorisme,” in Manuel López-Rey, ed., *Actes de la Vème Conférence Internationale pour l’ Unification du Droit Pénal (Madrid 14–20 Octobre 1933)* (Paris: A. Pedone, 1935), pp 42–47.
- 38 Henri Donnedieu de Vabres, *Les Principes Modernes du Droit Pénal International* (Paris: Recueil Sirey, 1928), pp 135–166; Vespasien Pella, *La Criminalité Collective des États et le Droit Pénal de l’ Avenir* (Bucarest: Imprimerie de l’ État, 1925), pp 157–159; Emil Stanislaw Rappaport, *Le Problème de l’ Unification Internationale du Droit Pénal* (Warsaw: Revue Pénitentiaire de Pologne, 1929), pp 19–21.
- 39 Raphael Lemkin, “Les Actes constituant un danger general (interétatique) considérés comme delits du Droit des Gens,” in López-Rey, ed., op cit, pp 48–56. For an English translation, made by James T. Fussell, see: [www.preventgenocide.org/lemkin/madrid-1933-english.htm](http://www.preventgenocide.org/lemkin/madrid-1933-english.htm) (November 11, 2004). A short version of Lemkin’s proposal was also published in German: Raphael Lemkin, “Akte der Barbarei und des Vandalismus als delicta juris gentium,” *Internationales Anwaltsblatt*, Vol 6, 1933, pp 117–119.
- 40 Lemkin, op cit, p 56.
- 41 López-Rey, op cit, pp 241–242.
- 42 López-Rey, op cit, pp 16–20, 143, 243; Donnedieu de Vabres, op cit, p 145.
- 43 Jescheck, op cit, pp 117–120; UNWCC, op cit, p 440; Timothy L. H. McCormack, “From Sun Tzu to Sixth Committee: the evolution of an international criminal law regime,” McCormack and Simpson, eds, op cit, p 54. On the *Association Internationale de Droit Pénal*, see: Jean-André Roux, “Le Projet de Convention Internationale pour la Répression des Crimes présentant un Danger Public,” *RIDP*, Vol 12, 1935, pp 99–130 and Quintiliano Saldaña, “Le Terrorisme,” *RIDP*, Vol 13, 1936, pp 26–37.
- 44 Megalos Caloyanni, “Commission de Rédaction d’ un Projet concernant les Infractions et leurs Sanctions,” *RDIP*, Vol 12, 1935, pp 337–347.
- 45 Ferencz, op cit, pp 269–371; Jescheck, op cit, p 118.

- 46 Vespasien Pella, "Plan d'un Code Répressif Mondial," *RIDP*, Vol 12, 1935, pp 348–369; *ibid*, op cit, pp 240–257, 271–277; Ferencz, op cit, pp 373–398; Jescheck, op cit, pp 118–120.
- 47 Charles B. Ingwersen and Henrik Sachs, eds, *Actes de la VIème Conférence Internationale pour l'Unification du Droit Pénal (Copenhague 31 Août–3 Septembre 1935)* (Paris: A. Pedone, 1938), pp 147–209, 369–413.
- 48 Ferencz, op cit, pp 378, 387–388, 397–398.
- 49 On Rappaport, see: Sliwowski, op cit, pp 16–17 and Zebrowska, op cit, p 588; on Lemkin, see: Korey, op cit, pp 46–47.
- 50 Korey, op cit, p 46.
- 51 Jean-André Roux, "Editorial," *RIDP*, Vol 17, 1946, pp 1–2; Emil Stanislaw Rappaport, "Vingt Ans Après," *RIDP*, Vol 17, 1946, pp 3–5; Simon Sasserath, "Le Président Vespasien Pella," *RIDP*, Vol 23, 1952, pp 12–13; Dominique Gros, "Le Statut des Juifs et les Manuels en Usage dans les Facultés de Droit (1940–1944)," in Philippe Braud, ed., *La Violence Politique dans les Démocraties Européennes Occidentales* (Paris: Éditions L'Harmattan, 1993), pp 144–152.
- 52 Ernst Joseph Cohn, "The problem of war crimes to-day," *Transactions of the Grotius Society*, Vol 26, 1941, p 141. Cohn had presented his ideas to the *Grotius Society* on May 29, 1940.
- 53 UNWCC, op cit, pp 99–101; Hans Kelsen, *Peace through Law* (Chapel Hill: University of North Carolina Press, 1944), pp 71–75; Albert Levy, "The law and procedure of war crimes trials," *American Political Science Review*, Vol 37, 1943, pp 1067–1068.
- 54 Sheldon Glueck, *War Criminals: Their Prosecution and Punishment* (New York: Alfred A. Knopf, 1944), pp 37–38; George A. Finch, "Retribution for war crimes," *American Journal of International Law*, Vol 37, 1943, pp 81–88. See also William B. Simons, "The jurisdictional bases of the International Military Tribunal at Nuremberg," in George Ginsburgs and Vladimir N. Kudriavtsev, eds, *The Nuremberg Trial and International Law* (Dordrecht: Martinus Nijhoff, 1990), pp 45–50.
- 55 Glueck, op cit, pp 37–45, 56–62; Finch, op cit, pp 85–88.
- 56 Manfred Lachs, *War Crimes: An Attempt to Define the Issues* (London: Stevens & Sons, 1945), pp 100–101; Georg Lelewer "The definition of war crimes," *Central European Observer*, Vol 21, 1944, p 116; Vaclav Benes, "The question of the definition of war crimes," *Central European Observer*, Vol 20, 1943, p 282; Aaron Naumovitch Trainin, *Hitlerite Responsibility under Criminal Law* (London: Hutchinson, 1945), pp 37–42, 71–78.
- 57 Daniel Marc Segesser, "On the road to total retribution? The international debate on the punishment of war crimes, 1872–1945," in Roger Chickering, Stig Förster and Bernd Greiner, eds, *A World at Total War: Global Conflict and the Politics of Destruction, 1937–1945* (Cambridge: Cambridge University Press, 2005), pp 362–370; Arieh Kochavi, *Prelude to Nuremberg: Allied War Crimes Policy and the Question of Punishment* (Chapel Hill: University of North Carolina Press, 1998), pp 95–171; Bass, op cit, pp 147–203.
- 58 UNWCC, op cit, pp 87–118; Jescheck, op cit, pp 121–137; Kochavi, op cit, pp 27–62.
- 59 Segesser, op cit, pp 364–370, 372.
- 60 Jescheck, op cit, pp 137–140; Segesser, op cit, pp 367–368.
- 61 Korey, op cit, p 46.
- 62 Raphael Lemkin, *Axis Rule in Occupied Europe: Laws of Occupation—Analysis of Government—Proposals for Redress* (Washington, DC: Carnegie Endowment of International Peace, 1944), reviewed by Arthur Leon Horniker in *Military Affairs: Journal of the American Military Institute*, Vol 9, No 1, 1945, pp 69–73, by John Mervyn Jones in *British Yearbook of International Law*, Vol 22, 1945, pp 313–314, by Arthur K. Kuhn in *American Journal of International Law*, Vol 39, 1945, pp 360–362, by Vlastimil Kybal in *Annals of the American Academy of Political and Social Science*, Vol 239, 1945, pp 190–192, by Ramsay Moran in *Virginia Law Review*, Vol 31, 1945, pp 730–733, and Melchior Palyi in *American Journal of Sociology*, Vol 51, 1946, pp 496–497.
- 63 Foreword of George A. Finch to Lemkin, op cit, pp vii–viii.
- 64 Lemkin, op cit, p ix.
- 65 Lemkin, op cit, pp x–xi, 7–78.
- 66 See Myriam Gessler, "Die Singularität des Holocaust und die vergleichende Genozidforschung: Empirische und theoretische Untersuchung zu einem aktuellen Thema der Geschichtswissenschaft," unpublished Lizentiatsthesis, University of Berne, Berne, 2000, pp 20–22.
- 67 Lemkin, op cit, p 79.
- 68 James Wilford Garner, *International Law and the World War*, 2 vols (New York: Longmans, Green, 1920); Commission on the Responsibility, pp 95–154; Lemkin, op cit, pp 48–56.
- 69 Lemkin, op cit, p 79–82.
- 70 *Ibid*, pp 90–95.
- 71 *Ibid*, pp 99–264.
- 72 *Ibid*, pp 267–635.

- 73 Ibid, p xiv.
- 74 On Morgenthau's ideas for a post-war Germany, see: Bass, op cit, pp 157–169; Bernd Greiner, *Die Morgenthau-Legende: Zur Geschichte eines umstrittenen Plans* (Hamburg: Hamburger Edition, 1995), pp 169–184; Gerhard L. Weinberg, *A World at Arms: A Global History of World War II* (Cambridge: Cambridge University Press, 1994), pp 795–797.
- 75 Lemkin, op cit, pp xiii–xiv.
- 76 Kochavi, op cit, pp 201–217; Segesser, op cit, p 372.
- 77 Raphael Lemkin, “The legal case against Hitler,” *The Nation*, Vol 160, No 8, 1945, pp 205–207, 268–270; ibid, “Genocide—a modern crime,” *Free World*, Vol 9, No 4, 1945, pp 39–43. On the debate on war crimes trials in early 1945, see Kochavi, op cit, pp 201–222.
- 78 William B. Simons, “The jurisdictional bases of the International Military Tribunal at Nuremberg,” in George Ginsburgs und Vladimir N. Kudriavtsev, eds, *The Nuremberg Trial and International Law* (Dordrecht: Martinus Nijhoff, 1990), pp 41–45; Bradley F. Smith, *The American Road to Nuremberg: The Documentary Record 1944–1945* (Stanford: Hoover Institution Press, 1982), pp 142, 212–220; Kochavi, op cit, pp 222–230.
- 79 Robert E. Conot, *Justice at Nuremberg* (London: Weidenfeld and Nicholson, 1983), pp 11–12.
- 80 Korey, op cit, p 47; Bernhard F. Hamilton, *A Note on Professor Lemkin's Work in London Culminating in the Nuremberg Indictment of October 18, 1945* at [www.genocidewatch.org/LKF/18oct2000.htm](http://www.genocidewatch.org/LKF/18oct2000.htm) (November 5, 2004).
- 81 Count 3 (A) of the Indictment. See: [www.yale.edu/lawweb/avalon/imt/proc/count3.htm](http://www.yale.edu/lawweb/avalon/imt/proc/count3.htm) (November 5, 2004). In the German text the word Genocide was translated as “Massenmord,” of which the equivalent in English would be “mass murder”: *Der Prozess gegen die Hauptkriegsverbrecher vor dem internationalen Militärgerichtshof: 14. November 1945—1. Oktober 1946*, 42 vols (Nuremberg: International Military Tribunal, 1947–1949), Vol 1, p 47.
- 82 Korey, op cit, p 47; Jacobs, op cit, p 133.
- 83 Raphael Lemkin, “Genocide,” *American Scholar*, Vol 15, No 2, 1946, pp 227–230.
- 84 Raphael Lemkin, “Genocide: a new international crime: punishment and prevention,” *RIDP*, Vol 17, 1946, pp 360–370; ibid, “Le Genocide,” *RIDP*, Vol 17, 1946, pp 371–386. The latter was a French translation of Lemkin's chapter on genocide from *Axis Rule in Occupied Europe*.
- 85 Lemkin, op cit, p 363.
- 86 Korey, op cit, pp 45, 47. On the genesis of the Genocide Convention, see: William Schabas, *Genocide in International Law* (Cambridge: Cambridge University Press, 2000), pp 51–81.
- 87 Korey, op cit, p 45.