

Report from the conference

(transl. from Polish Anna Konieczna-Purchała)

The international conference “Civilians in contemporary armed conflicts. Rafał Lemkin’s Heritage” was held at the Ivan Franko National University of Lviv on 15-16 October 2015. It was organized jointly by the Foundation for Polish-German Cooperation, the Institute of International Relations at the University of Warsaw, and the Faculty of International Relations of the Ivan Franko National University of Lviv (in association with the Lviv Centre of International Law and Human Rights).

Rafał Lemkin was a Polish lawyer of Jewish roots, born in the Grodno region (today’s Belarus). He was a graduate of the Jan Kazimierz University in Lwów. He coined the term “genocide” and co-authored the 1948 UN Convention on the Prevention and Punishment of the Crime of Genocide. In his work he also investigated the Holodomor, the famine in Ukraine in 1932–1933, where Soviet policy resulted in millions of casualties.¹ In the past, Lemkin was little known both in Poland and in Ukraine, but this has changed in the last decade.² The situation of civilians in contemporary armed conflicts is an issue of utmost importance, both legally and politically. Civilians account for approx. 80% of victims of conflicts, which is largely due to one-sided violence.

The conference was opened by professor Markiiian Malskyi, former ambassador of Ukraine in Poland and former dean of the Faculty of International Relations of the Ivan Franko National University of Lviv. He spoke about the centuries-long European history of Lviv and about the city’s role as a centre of academic thought. He noted the importance of cooperation between the Faculty of International Relations of the Ivan Franko National University of Lviv and the Institute of International Relations at the University of Warsaw.

¹ R. Lemkin, *Soviet genocide in the Ukraine*, Kashtan Press, Kingston 2014.

² *Rafał Lemkin: a hero of humankind*, eds. A. Bieńczyk-Missala, S. Dębski, The Polish Institute of International Affairs, Warsaw 2010.

He explained his belief in the relevance of the topic of the conference, in particular given Russia's aggression against Ukraine. Professor Edward Haliżak, head of the Institute of International Relations at the University of Warsaw, took the floor next. He spoke about the accomplishments of Rafał Lemkin and the lasting impact on him that studying law at the Jan Kazimierz University had made. The next words to the audience were offered by Petro Kolodyi, chair of the District Council in Lviv, whose speech honoured the tragic fate of Ukrainian civilians under Russian aggression. Kolodyi compared the conduct of Russia today to Holodomor, when – in his opinion – the authorities also acted with indifference while the death toll continued to rise. He said all necessary measures must be taken to ensure that Russia is held accountable for its crimes. The last speech in this part of the conference was delivered by professor Ihor Byk, dean of the Faculty of International Relations of the Ivan Franko National University of Lviv. He spoke about his pride in the fact that Lemkin was a graduate of the Jan Kazimierz University, and said he believed it was now a necessity to study Lemkin's work.

After the welcome, the keynote speech was delivered by professor Adam Daniel Rotfeld, former Minister of Foreign Affairs of Poland. He outlined the concept of genocide as developed by Rafał Lemkin. The term, coined by Lemkin, has been easily and permanently absorbed into language; for centuries, while the practice of exterminating entire nations was known, there was no term to denote it. It was only the crimes of the Third Reich that forced the members of the Grand Alliance to implement new legal regulations, and genocide became a crime under international law. It was clear, said Rotfeld, that Germany committed genocide during World War II, in particular on Polish territories and in particular with regard to the Jewish population. Yet Lemkin's beliefs had been shaped also by other crimes, such as the persecution of Christians in Rome (as described by Henryk Sienkiewicz in his novel *Quo Vadis*) and the Armenian genocide in Turkey at the beginning of the 20th century. At present, noted Rotfeld, "genocide" is a term used by many nations. It is applied to the Holodomor in Ukraine, nuclear attacks against Hiroshima and Nagasaki in Japan, and Pol Pot's atrocities in Cambodia. There are emotional debates as to whether Bolshevik crimes are "just" crimes against humanity or whether they constitute genocide. What is upsetting is that these crimes are sometimes used to generate a relativized view of the crimes of the Third Reich, in particular of the Holocaust. In his recapitulation, Rotfeld said that Lemkin had made a great contribution to the development of international moral norms, and towards penalizing the crime of genocide.

During the first panel discussion of the conference, the participants contemplated Rafał Lemkin's work in the perspective of the accomplish-

ments of the Lwów school of law. The first presentation focused on the great teachers (the “masters”) of Rafał Lemkin. It was delivered by professor Adam Redzik from the University of Warsaw and Ihor Zeman from the Ivan Franko National University of Lviv. The two speakers talked about how Lemkin had originally enrolled at the Jagiellonian University in Kraków but was expelled after disciplinary proceedings – and that is how he became a student in Lwów, with its world-famous school of legal thought (led by Juliusz Makarewicz, Ludwik Ehrlich, Oswald Balcer and many other scholars). After graduation, Lemkin found employment in Warsaw and met Emil Rappaport and Waław Makowski. It was in that time that he articulated the concept of a crime of barbarity, a foundation for his later concept of genocide. The presenters briefly discussed the accomplishments of these masters of Rafał Lemkin and their contributions to the development of legal scholarship. The next person to take the floor was professor Philippe Sands (University College London), who gave a presentation on the contribution of the Lwów school of law to the development of international law. In his view, there are very few cities of comparable size that have made a comparable impact. Sands spoke about two members of the Lwów school of law, Hersch Lauterpacht and Rafał Lemkin. Lauterpacht’s worldview had been shaped by fighting in Lwów in 1918, an experience that made him realize all individuals deserve to have certain identical rights. Lauterpacht was strongly opposed to the concept of genocide, because he feared that in consequence, rights of groups would prevail over rights of individuals. On the other hand, Lemkin became the chief proponent of the term “genocide”. Sands noted that Lemkin always tended to publicize his accomplishments and diminish his failures (e.g. being expelled from the Jagiellonian University in Kraków) – but this of course makes his contribution to international law none the smaller. The third presentation was delivered by dr Konstiantyn Savchuk from the Kiev University of Law of the National Academy of Sciences of Ukraine. The topic was Holodomor, the case of genocide that took place in Ukraine. The political and legal circumstances of Holodomor were discussed, and the speaker listed the many states and international bodies that have officially declared Holodomor to be genocide. This was also Lemkin’s belief; he had applied the term to Holodomor already in the 1950s. Savchuk offered a detailed analysis of the regulations of international law with regard to Holodomor. The last presentation of this part of the conference, on the impact of the genocide of Armenians in Turkey on Lemkin’s work, was delivered by dr Vladimir D. Vardanyan from the Constitutional Court of Armenia. He presented the historical facts about the Turkish slaughter of Armenians and discussed the legal aspects of that tragedy. While Lemkin made few overt references to the Armenian genocide in his work, he believed

it was the precedent, or possibly a model, for the genocidal policies of the Third Reich. After the presentations, the debate included topics such as: Jan Karski and his contribution to the information about Holocaust; the responsibility of today's Russia for Holodomor; differences between genocide and crimes against humanity; the proceedings during Nuremberg trials (in which Lemkin took part as an adviser to Robert H. Jackson, the chief American prosecutor).

The second panel discussion of the conference focused on international security. Professor Roman Kuźniar (University of Warsaw) opened it with a presentation on the war in Ukraine and its impact on the international security system. The purpose of Russia's aggression was to reclaim the formerly Russian territories of Crimea and Donbass, but more importantly to prevent Ukraine's close association with Western structures. Russia has violated the fundamental principles of international law enshrined in the UN Charter, the European legal order, and its specific obligations towards Ukraine and towards its western partners. The West responded with sanctions against Russia, a stronger eastern NATO flank, and aid for Ukraine. Nonetheless, the international system has not changed; a breach of law does not automatically change the law. "Hybrid warfare" is also not a new idea. Chinese thinker Sun Tzu has already discussed a similar concept. According to Kuźniar, the war in Ukraine demonstrated that the international community has a problem when one of the five superpowers (permanent members of the UN Security Council) breaches international law. It also revealed the relative weakness of Organization for Security and Cooperation in Europe (OSCE), which was only given a technical role during the conflict, of the Common Foreign and Security Policy, and the Common Security and Defence Policy. On the other hand, the conflict strengthened NATO. The key challenge is that Russia and certain communities in the West believe that a new international order is necessary. In a sense, instituting this new international order would amount to rewarding Russia for its aggressive policy. The second presentation was by professor Markiiian Malskyi (Ivan Franko National University of Lviv), who pointed to the dangers of Russia's policy: annexation and destabilization of the Crimea, and support for separatists. Malskyi listed the conditions that must be met to ensure Ukraine's safety: a stable economy, a sensible analysis of risks, an uncompromising stand towards Russia, and self-confidence. He said that Ukraine is making correct use of the available diplomatic instruments in the pursuit of its objectives. After the presentations, the debate focused on the internal situation in Ukraine, the international status of the West, strengths and weaknesses of OSCE as a regional collective security organization, and the Russian idea of a new international order which is in fact simply an effort

to recreate the former “concert of superpowers” and restore the division of powers achieved at the Yalta conference.

The next panel discussion was devoted to the challenges of protecting civilians in contemporary armed conflicts. The first to speak was Zhanna Lukianenko from the Office of the Plenipotentiary of the Verkhovna Rada of Ukraine for Human Rights (the ombudsman), in charge of ensuring the protection of internally displaced persons. She presented the pressing problems in the territories controlled by the pro-Russia separatists from the Donetsk People's Republic and Luhansk People's Republic. Ukrainian institutions have no access to these territories and therefore the population there has been cut off from social services. This includes particularly vulnerable groups such as children in children's homes. Solving this problem would require the Ukrainian ombudsman to establish relations with the authorities of the two republics, which however have not been officially recognized. The next presentation on the dilemmas of international humanitarian law with regard to civilians was delivered by dr Patrycja Grzebyk (University of Warsaw). She explained that humanitarian law either allows for the use of violence or prohibits the use of violence with regard to specific persons depending on their status. However, today the distinction between combatants and civilians is increasingly difficult to make, in particular in non-international armed conflicts. The former are afforded no protection (unless they have stopped fighting), even though contemporary states endeavour to minimize their losses of military personnel. The latter in principle are afforded protection. A potential solution is to replace the existing category of armed force membership with having a so-called continuous combat function. The next presentation, by professor Hans-Joachim Heintze (Ruhr University Bochum), was on the issue of access to victims. International law provides that the occupying power is responsible for the civilian population; if it cannot meet its obligations, it must consent to the provision of international humanitarian aid. In non-international conflicts, the situation is different. In principle, the state's consent to international aid is necessary, but refusal to grant such consent must be based on good reasons. In the last presentation, dr Marek Madej (University of Warsaw) discussed the militarization of international aid. He said that humanitarian aid often becomes a military instrument in the service of military objectives, which includes “winning the hearts and minds” of the local civilian population. The following factors are conducive to the militarization of humanitarian aid: the changing nature of armed conflict; the increasingly broad understanding of security; the economic crisis, which makes donors less generous unless they see a benefit. While there are some positive consequences to this trend, the negative consequences prevail. Humanitarian aid is no longer objective and

loses credibility. In the debate that followed the presentations, the following issues were discussed: terrorism as a war crime; the international law status of the conflict in the Donbass region, the Donetsk People's Republic and Luhansk People's Republic; militarization of aid after a conflict is over.

The fourth panel discussion was devoted to international institutions and the protection of civilians. The first presentation was by professor Mykola Gnatovskyy from the Council of Europe's Committee on the Prevention of Torture. He analyzed the case law of the European Court of Human Rights with regard to the rights of civilians in armed conflicts. The mechanisms created by the Convention for the Protection of Human Rights and Fundamental Freedoms were not designed to ensure the protection of civilians as a group, he said. This generates serious terminological and methodological problems in the application of the Convention to situations arising in armed conflicts. The next speaker was dr Ivan Horodyskyy (Ukrainian Catholic University), who discussed the concept of the responsibility to protect (R2P) and the role of the UN Security Council within it. He cited one of Lemkin's professors who said that the civilian population is like a flock of chickens; if the farmer decides to kill them, this is solely his business. He noted that this way of thinking had prevailed for many years, until the situation changed in mid-20th century, and this change is at the root of R2P. Horodyskyi discussed the origins and main tenets of the responsibility to protect. He stressed that R2P cannot serve as a pretext for interfering with another country's internal affairs. The Security Council must ensure that this instrument is applied in accordance with its intended purpose by the international community. The third presentation, delivered by dr Vitalii Gutnyk (Ivan Franko National University of Lviv), focused on international criminal tribunals and stronger protection of civilians. Gutnyk started by briefly recounting the accomplishments of international criminal tribunals and the types of crimes that fall within their jurisdictions. He pointed out that killing even a few persons may qualify as a crime against humanity. When discussing the International Criminal Court, he noted that Ukraine has not ratified the Rome Statute, because doing so requires an amendment to the Constitution, a difficult task to complete. Dr Agnieszka Bieńczyk-Missala (University of Warsaw) delivered the last presentation. She spoke about the UN mechanisms aimed at preventing mass atrocity crimes. She presented the existing solutions and the problems that hinder effective prevention of such crimes: absence of effective cooperation between various structures within the UN family, and the reluctance of governments of various states to have the UN tackle this issue.

The final panel discussion consisted of case studies regarding the protection of civilians in contemporary armed conflict. First, professor Roman

Wieruszewski (Institute of Law Studies of the Polish Academy of Sciences) talked about the Balkan war. He explained why the prevention mechanisms proved ineffective in former Yugoslavia, discussed the weaknesses on international mechanisms in the initial years of the war (UNPROFOR), and recounted how only the decision to use force in 1995 put a quick end to the conflict. He said that in his opinion, stopping a war requires the readiness to go to war. After the Balkan war ended, there was no universal consent that bringing the perpetrators to justice would help render the region stable again. Wieruszewski expressed his positive opinion as to this solution. The next speaker was professor Oleksandr Zadorozhnyi (Ukrainian Association of International Law), who discussed the situation of the civilian population during the conflict in Ukraine. In a few words he summarized the situation in the east of Ukraine, noting the need to protect the civilian population in that area. Zadorozhnyi talked about the responsibility of states for war crimes and crimes against humanity; this pertains not only to Russia but to Ukraine as well, given how it proved unable to protect its nationals, he added. He pointed to the possibility of bringing individual persons to justice, and warned against using amnesties as a measure intended to bring lasting peace. Instead, he suggested that extralegal mechanisms are more effective, e.g. in the form of truth committees that have functioned well in other countries. To close the session, dr Gilad Ben-Nun (Leipzig University) spoke about the exiles in Asia Minor over the last century, comparing the Armenian exile a hundred years ago, fleeing Turkish persecution and heading for Syria, with today's flight of Syrians to Turkey and onward towards the West. Once again, the majority of those fleeing the country are women and children. The issue at the heart of the conflict continues to be Russia's desire for access to the Mediterranean. A possible solution could consist in establishing nation states in the region, upon the rubble of the old order, but Ben-Nun does not find this a good idea. In the debate at the end of the panel discussion, the following issues were discussed: the future of Syria; the potential need to bring to justice the perpetrators of the crimes committed in Donbass by Ukrainians; the need for actual willingness to use force in order to provide effective protection to civilians during armed conflicts.

The final speeches of the conference were made by professor Roman Kuźniar (University of Warsaw) and Cornelius Ochmann (Foundation for Polish-German Cooperation). Roman Kuźniar spoke about Lemkin's contribution to the development of humanitarian law, about the impact of the Lwów school of law on the history of legal thought, and about the contemporary scholarly Polish-Ukrainian cooperation. Cornelius Ochmann highlighted the European identity of Lviv and expressed the willingness

of the Foundation for Polish-German Cooperation to continue the support for Polish-Ukrainian projects.

In the late 1940s, Rafał Lemkin made a significant contribution to the development of international law. His views had a momentous role in helping shape international criminal law. However, the measures developed at that time offer only a limited solution to the challenges to non-international armed conflicts, which are gaining increasing importance in today's post-Cold War world.