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RAPHAEL LEMKIN AND THE 1948 UN GENOCIDE CONVENTION

The paper concerns the 1948 UN Convention on the Prevention and Punishment of the Crime of Genocide and largely aims at examining the lexical, semantic, stylistic and functional details of the text of the 1948 UN Convention as compared with the text of R. Lemkin's Draft Convention on the Crime of Genocide. The texts of these two mentioned documents are treated as samples of genocide discourse, and the comparative linguistic study, ranging from general overviews and theoretical reflections to this particular case, reveals a wide scope of pragmatic and cognitive problems related to the question of linguistic expression of official censure on one of the most vicious crimes against mankind – genocide. I should hasten to add, however, that these are the objectives of research as a whole, and that is being carried out within the scope of a project under the auspices of the State Committee of Science of RA. Today, however, having time restrictions, I would rather concentrate only on some aspects of the question.

We know that the 1948 UN Genocide Convention is the first human rights treaty adopted by the General Assembly of the United Nations. It focuses attention on the protection of national, racial, ethnic and religious minorities from threats to their very existence. It is obviously aimed to eradicate racism, discrimination and xenophobia. Moreover, it underscores the role of criminal justice and accountability in the protection and promotion of human rights. However, the Convention has been too often criticized for its limited scope. In the words of the law scholar William Schabas it was really more a case of frustration with an inadequate reach of international law in dealing with mass atrocities. As he thinks, and as history has shown, this difficulty would be addressed not by expanding the definition of genocide or by amending the Convention, but rather by an evolution in its close relation to the concept of crimes against humanity. Accordingly, «the crime of genocide has been left alone, where it occupies a special place as *the crime of crimes*».¹

It should be mentioned here, that however important the adoption of the Genocide Convention was, the way to its formation was long and uneasy. No doubt, of course, it was the result of consistent, constructive and co-operative efforts by groups of legislators, lawmakers and politicians, but to a greater extent, it owes its existence to the Polish-Jewish linguist and lawyer Raphael Lemkin (1900–1959) who created the world history of genocide after the war and insisted on establishing a legal framework

¹ Schabas W., 2014, 6. <http://legal.un.org/avl/ha/cppcg/cppcg.html>

for the recognition of genocide as an international crime to be punished and punishable through international cooperation, and proposed a draft treaty against genocide to the United Nations in 1945.²

Raphael Lemkin was, in fact, a great intellectual, one of the giants of modern ethical thinking, and if the history of the Western moral is the story of an enduring and unending revolt against human cruelty, then he is one of the strongest fighters against that cruelty in favor of the rights of human groups. The genius of R. Lemkin consisted in his ability of reshaping international legislation, introducing a completely new interpretation into the world-wide concept of human rights, thus inspiring the 1948 UN Genocide Convention, and profoundly influencing the history of human rights.

Lemkin's interest in the subject dates back to his university days though his sensitivity to injustice and violence has developed since very young age. Already a student at Lvov University, he was quite determined to make attempts to prosecute the perpetrators of the massacres of the Armenians.³ His interest in the concept of this specific type of crime and his initiative in developing the notion of genocide and later the term was derived from the experience of the Armenians and the Assyrians massacred by the Turks. (I would like to add here in parenthesis that as far as the origin of the term *genocide* is concerned, according to the studies by A. Musheghyan's, the juridical use of the notion *genocide* – (Vernichtung einer Rasse) first occurred in «*Der Völkermord an den Armeniern vor Gericht. Der Prozeß Talaat Pasha* by Armin Wegner»⁴).

However, the starting point for R. Lemkin to sum up the results of his research on the problem of terrorism at large, which lately paved a path towards the elaboration and explication of the concept of genocide, and to present those results to the community of professionals was the International Conference on the problem of Unification of Penal Law held in 1927 in Warsaw.⁵ It was here that he presented the list of offences including piracy, trade in slaves, trade in narcotics, trafficking in obscene publications, terrorism, etc. (he completed the list later), by then envisaged by R. Lemkin as dangerously threatening phenomena for both material or moral interests of the entire international community. His determination of elaborating the rudiments

² **Lemkin, R.** (1933) *Les actes constituent un danger général (interétatique) considérés comme-délits des droits des gens*. Paris: A. Pendone. Tr.-ed by Fussel, J. T. *Acts Constituting a General (Transnational) Danger Considered as Offences against the Law of Nations*. Special Report presented to the 5th Conference for the Unification of Penal Law in Madrid. <<http://www.preventgenocide.org/lemkin/madrid1933-english.htm>>, (Copyright 2003), Accessed [January 11, 2016]; **Lemkin R.**, 1945, Vol. 4, 39–43. Prevent Genocide International. <info@preventgenocide.org/lemkin/freeworld 1945.htm>, (Copyright 2000), Accessed [January 11, 2016]; **Lemkin R.**, 1946, Vol. 15, 227–230. Prevent Genocide International. <<http://www.preventgenocide.org/lemkin/americanscholar1946.htm>>, (Copyright 2000), Accessed [January 11, 2016]; **Lemkin R.**, 1947, Vol. 41 (1), 145–151. Prevent Genocide International, <<http://www.preventgenocide.org/lemkin/ASIL1947.htm>> (Copyright 2003), Accessed [January 11, 2016].

³ **Schabas W.**, 2000, 25.

⁴ **Musheghyan A.**, (2011) *Armin Vegnery «tseghaspanutyun» iravakan termini heghinak*. // Azg, № 7, 23.04.

⁵ <<http://www.preventgenocide.org/lemkin/madrid1933-english.htm>> Accessed [January 11, 2016].

of international law concerning the annihilation of human groups and the systematic destruction of the cultural values created by them was so powerful that at the next conference in 1933 in Madrid R. Lemkin proposed to identify all those *acts of barbarity*, targeted at the extermination of human groups, as well as *acts of vandalism* meant to destroy works of cultural heritage, as universally recognized condemnable actions, consider them transnational crimes which threaten the interests of the international community as a whole, and create a multilateral convention identifying them as *international crime*. By proposing his immanent, metahistorical genocide discourse, R. Lemkin extended empathy to all victims of genocides and persecutions, and applied social scientific explanations to both victims and perpetrators.

Lemkin's discourse is cosmopolitan in the sense that it does not take any particular genocide as a prototype, model or paradigm against which others should be condemned; his moral purpose was to prevent and criminalize genocides in general by seeking to explain their occurrence throughout history. This methodology, which is a good guide for current and future research, is well expressed in his definitions on the recognition of genocide as crime against humanity and served as a basis for the UN Convention on genocide. However, as already mentioned, the adoption of an international law was not an easy task at all. It required a lot of moral pressure to be exerted on the statesmen of the UN member states, to enlist a great number of supporters, to explain and underscore the merits, the desirability and the need for the law to overcome the opposition by the British, the French, the US and the USSR,⁶ and then, while the UN Genocide Convention was being drafted, to hold conversations and arguments with the draftsmen in order to achieve a possibly full coverage in the Document of all kinds of genocidal offences, because his desire was to safeguard the world against those transnational hazards.

It is of interest for us to note that some genocide scholars believe that when Raphael Lemkin coined the word *genocide* in 1944 he had in mind the 1915 annihilation of Armenians and the Jewish Holocaust,⁷ which he considered as two archetypes of crime against humanity. They think, Lemkin did not confine his definition of the term solely to the murder of the Jews in Nazi-occupied Europe, particularly that his interest in the nullification of peoples emerged in his teenage years around the time of the Armenian Genocide.⁸ Besides, as Lemkin's autobiography and

⁶ The British Attorney-General Sir Hartley Shawcross, the Chief British Prosecutor at Nuremberg, even spoke out mentioning: «Nuremberg is enough! A Genocide Convention cannot be adopted!» Cf. **Frieze, Donna-Lee**, 2010, 68. <http://scholarcommons.usf.edu/cgi/viewcontent.cgi?article=1009&context=gsp>>Accessed [January 11, 2016].

⁷ It is however known that while the term Holocaust is used with reference to the systematic mass murder in Nazi-occupied Europe, there was also a large number of non-Jewish people (Slavs, Romanis), people belonging to the LGBT category (lesbian, gay, bisexual, transgender), etc. who were considered *Untermenschen* (subhuman). Cf. **Berenbaum M.**, 2005, 125; Cf. also *Holocaust Victims*. (2016) // Wikipedia. <https://en.wikipedia.org/wiki/Holocaust_victims>Accessed[September 5, 015].

⁸ **Auron Y.**, 2004, 9. **Gilmore, H.** (7 March 2005) *An interview with RFE/RL. Former US Envoy Backs Armenian Genocide Recognition*. (by Emil Danielyan). <<http://www.azatutyun.am/content/article/1576007.html>> Accessed [October 18, 2015].

letters reveal,⁹ he was well aware of the reality that the Armenians were slaughtered for the only reason of being Christians, and the idea, forced into circulation, that the destruction of Armenians occurred as a result of the unfavourable conditions created by War, was far-fetched and groundless. One can say that the Armenian Genocide and later the Jewish Holocaust were, in fact, decisive turning points for R. Lemkin, who took a unique interest in mass atrocities before the draft of the international law was created. Once, while a linguistics student at the University, he asked his professor why the Armenians did not have Turkey's interior minister arrested after his government's targeted the murder of Armenians. Lemkin was told that there was no law under which he could be arrested, a reality that troubled him greatly, and above all, the Holocaust of the Jews provided him with an additional impetus for his research and his campaign to have the crime of genocide incorporated into the international law.¹⁰ And finally, in an interview R. Lemkin himself declared, «I became interested in genocide because it happened so many times. It happened to the Armenians, then after the Armenians, Hitler took action».¹¹

The fact that two earlier drafts were written before the final text was ready for adoption, shows the complexity and debatability of the problem in question. It should be added here that when in 1945 the International Military Tribunal held at Nuremberg, Germany, charged the top Nazi with crimes against humanity the term *genocide*, though included in the indictment, was just a descriptive term, not a legal one yet. On the other hand, the failure of the International Military Tribunal to condemn what some called «peacetime genocide» prompted immediate efforts within the United Nations General Assembly¹² to adopt Resolution 96 (I) on 11 December 1946, which asserted that genocide is a crime under international law. Although it provided no clarification on the subject of jurisdiction, it mandated the preparation of a draft convention on the crime of genocide. Thus, on the request of the General Assembly, the Economic and Social Council of UN started the necessary studies with the intention of drafting a convention on the crime of genocide. The Economic and Social Council instructed the Secretary General to enhance the work on the draft taking the assistance of the Division of Human Rights and a group of three experts (Raphael Lemkin, Henry Donnedieu de Vabres and Vespasien Pella), who were expected to prepare a draft convention accompanied by a commentary. In March 1947 the text titled the Secretariat Draft which is also referred to as **Lemkin's Draft**, for Lemkin was one of the most active members of the expert group, was prepared and on 26 June

⁹ **Lemkin R.** (2013) *Totally Unofficial: The Autobiography of Raphael Lemkin.*/ Ed. by Donna-Lee Frieze. New Haven, Ct: Yale University Press.

¹⁰ **Stone D.**, 2005, 539–550.

¹¹ **Video interview with Raphael Lemkin.** (1949) // CBS News. Commentator Quincy Howe.<vimeo.com> Accessed [October 18, 2015].

¹² **Schabas W.**, (2014) *Convention on the Prevention and Punishment of the Crime of Genocide.*//Audiovisual Library of International Law.<<http://legal.un.org/avl/ha/cppcg/cppcg.html>> Accessed [July 5, 2015].

1947 (UN Doc. E/447) proposed to the UN General Assembly by the UN Economic and Social Council.¹³

However, in November 1947 on the request of the General Assembly and by resolution 180 (II) the Economic and Social Council continued its work on the Draft without waiting for the observations of all Member States. In March 1948 by resolution 117 (VI) an Ad Hoc Committee with representatives of US, USSR, Lebanon, China, France, Poland and Venezuela was established which began making preparations for redrafting a Genocide Convention. R. Lemkin was not included, as he was not an official delegate. The Ad Hoc Committee, having several meetings from April 5, 1948 to May 10, 1948) dubbed a second draft (**the Ad Hoc Committee Draft**) with commentaries.

The final text of the Convention, adopted on 9 December 1948, at the 3rd meeting of UN General Assembly in Paris (resolution 260 (III)),¹⁴ was based on the Ad Hoc Committee Draft though the latter was a significantly diluted version of the previous «Secretariat Draft.»¹⁵

We have to agree that as far as the Convention establishes *genocide* as an international crime, which signatory nations undertake to prevent and punish, it is of enormous importance. But our comparative-confrontational analysis of the 1948 UN Genocide Convention and what is called Lemkin's Draft Convention shows that the final text, i.e. the 1948 Convention defines *genocide* without the precursors and persecution that Lemkin noted in his definitions, and also without taking into consideration certain important stylistic and cognitive strategies or discourse details typical of Lemkin's language. However, the text of the Convention for the Prevention and Punishment of the Crime of Genocide was adopted by the United Nations General Assembly and after obtaining the requisite twenty ratifications put forward by article XIII, entered into force on 12 January 1951. In July, 1985, the UN Sub-Commission of Discrimination and Protection of Minorities revised and updated the issue of genocide and its prevention.¹⁶

Over the next fifty years, after the adoption of the Convention «the two related but distinct concepts – the concept of genocide and the concept of crimes against humanity had an uneasy relationship. Not only was genocide confirmed by treaty, it came with important ancillary obligations, including a duty to prevent the crime, an obligation to enact legislation and punish the crime, and a requirement to cooperate in extradition. Article IX gave the International Court of Justice jurisdiction over disputes between State Parties concerning the interpretation and application of the Convention. Crimes against humanity were also recognized in a treaty, the Charter of the International Military Tribunal, but one that was necessarily of limited scope and

¹³ <http://www.preventgenocide.org/law/convention/drafts/> Accessed [October 15, 2015].

¹⁴ Cf. http://Jegal.un.org/avl/pdf/ha/cppcg/cppcg_ph_e.pdf Accessed [October 15, 2015].

¹⁵ <<http://www.ncas.rutgers.edu/center-study-genocide-conflict-resolution-and-human-rights/raphael-lemkin-project-0>>Accessed[October15,2015].

¹⁶ **Lendman, S.** (Copyright 2012) *The Armenian Genocide*. // The Peoples Voice. <http://www.thepeoplesvoice.org/TPV3/Voices.php/2012/02/03/the-armenian-genocide> Accessed [October 15, 2015].

whose effective application concluded when the judgment of the first Nuremberg trial was issued. The only other obligations with regard to crimes against humanity at the time existed by virtue of customary international law.»¹⁷

While many cases of intended group-targeted violence have occurred throughout history and even since the Convention came into effect, the legal and international development of the term is concentrated into two distinct historical periods: the time from the coining of the term until its acceptance in international law, and the time of its activation with the establishment of international criminal tribunals to prosecute the crime of genocide. Preventing genocide, the other major obligation of the convention, remains a challenge that nations and individuals continue to face.

Unfortunately, life shows that the adoption of this document did not prevent mankind from new deliberate actions of extinction, mass murders in the 20th century and the 21st following it.¹⁸ This unhappy outcome results from the fact that one of the most outrageous acts of annihilation – the Armenian Genocide – has not been widely acknowledged and condemned by the international community. Some also erroneously think that to a greater extent it depends on the failure of the Turkish government to cognize its dark historical reality.¹⁹ We, however, believe that Turkey's misbehavior concerning the issue must by no means become an hindrance for the progressive part of the international community on its way to denying falsification of history. On the other hand, there does not seem to be any insistence on adhering to the norms established by the Convention in condemning and punishing the countries that keep violating the requirements of the Document.

With the Centenary of the Armenian Genocide in April 2015 and a century-long indifference and denial by Turkey, the issue of the Convention, its applicability and role in acknowledging the Armenian Genocide, let alone reparations, arises once again. Hence in this paper, adopting a new outlook on the problem, we see our task in examining the 1948 UN Convention against the background of Lemkin's Draft (i.e. the Secretariat Draft) as samples of linguistic texts from linguo-stylistic, pragmatic,

¹⁷ Schabas W., 2014, 4.

¹⁸ Indeed, since the adoption of the UN Convention in 1948 and the ratification of it in 1951 by more than twenty countries, the history of the world has seen many other different cases of massive crimes against civilian population: destructive actions throughout the Cold war (1950–1987), the wars of the former Yugoslavia (1991–1995), Genocide in Cambodia (1975–1979) and Rwanda (1994), Genocide in Darfur (2004), attacks upon the peaceful population (previously survivors of the Armenian Genocide of 1915) in Kessab, and the events that are in full swing in Syria at large, and so on. Cf. *Genocide Timeline*. (Copyright 2016) // Holocaust Encyclopedia. <<http://www.ushmm.org/wlc/en/article.php?ModuleId=10007095>> Accessed [February, 19, 2016]. Turkologist **Gevorg Petrosyan** qualifies the attacks in the densely Armenian-populated town of Kessab (in northwest Syria) as events signaling the 3rd genocide against the Armenians. Though the latter were fortunately evacuated by the local Armenian community leadership to safer areas, the pillaging of their residences could not be stopped. <<http://en.alplus.am/1185215.html>> Accessed [February 20, 2016]. The American Congressman Adam Schiff raised the issue of Kessab at a meeting with Erdogan and Gul in Ankara and expressed his concern over the forced evacuation of the historic Armenian community there. <<http://asbarez.com/122938/schiff-presses-erdogan-gul-on-genocide-kessab-at-meeting-in-ankara/>> Accessed [February 20, 2016].

¹⁹ www.oukhtarat.com/haytarutyunner/Datapartman-jamanaky.php Accessed [March 4, 2014].

and cognitive perspectives. Our aim is to reveal how the effect of different linguistic interpretations of one and the same idea can vary by stressing and highlighting or hedging and veiling certain debatable or problematic matters. Being a sample of an official document, the text of the convention should be structured straightforwardly, in accordance with its literal interpretation, leaving no room for conjecture, undesirable implications or ambiguity. Our comparative analysis shows how much the communicative effect of the discourse changes when the authors of the Convention revise or rewrite the Draft Convention, polishing, condensing it, unfortunately, discarding certain important ideas, and actually changing the language strategy.²⁰

To illustrate this point we would rather turn to the opening parts of both the Documents. The study of the Preamble of Lemkin's Draft from a linguo-stylistic perspective brings out its stylistic value.

Preamble

The High Contracting Parties proclaim that genocide, which is the intentional destruction of a group of human beings, defies universal conscience, inflicts irreparable loss on humanity by depriving it of the cultural and other contributions of the group so destroyed, and is in violent contradiction with the spirit and aims of the United Nations.

- 1. They appeal to the feelings of solidarity of all members of the international community and call upon them to oppose this odious crime.*
- 2. They proclaim that the acts of genocide defined by the present Convention are crimes against the law of nations, and that the fundamental exigencies of civilization, international order and peace require their prevention and punishment.*
- 3. They pledge themselves to prevent and to repress such acts wherever they may occur.*

(Draft Convention 1947)

The presence of expressive-emotional-evaluative overtones in the text can be accounted for by the fact that the linguistic units used in it carry specific stylistic charges (*universal conscience; irreparable loss; violent contradiction; appeal to the feelings of solidarity; odious crime*). Furthermore, it is highly important to note the universality or the sense of a collectivist attitude to the problem. This attitude is first of all evident in highly emphatic formulations describing a number of people naturally associated: *high contracting parties; humanity; cultural and other contributions of the group; all members of the international community; the law of nations; fundamental exigencies of civilization; international order and peace*.

²⁰ A successful discourse study of political speeches of American presidents has been carried out by S. Zolyan. Cf. (2015) AMN nakhaghahner Hayots tseghaspanutyun masin (khusanavogh diskursi imastagortsabanakan verlutsutyun), Yerevan, Limush Press.

Analyzing the Preamble from a pragmatic perspective, we can conclude that it has two communicative focuses: the doer of a desirable action (*the High Contracting Parties*) and a deplorable action which should be blocked.

Notably, the authors' intent in this part of the Document is highly performative, and this means that the Draft can be viewed as a kind of action performed using words. It should be stated from the very start that the performativity in this part of the discourse is specific. First of all the Draft is written in the name of the *High Contracting Parties*, which means that with the doer of the action in plural, it, in fact, lacks independent initiative. This must be the reason why the performativity of the Preamble is formulated by a specific lexical-grammatical form, namely, third person plural *they* denoting that a collective doer is prescribed a specific form of action. The collectivist attitude is highlighted once more on the pragmatic level, and the performative verbs *proclaim* (2), *appeal*, *pledge*, *require*, *call upon* can be observed in the Preamble. These performatives which constitute direct representatives (*proclaiming*, that is declaring officially to do action), directives (*appealing*, that is an earnest request to do action; *requiring*, that is insisting upon doing action, *call upon*, that is requiring to do action), commissives (*pledging*, that is undertaking to do action) name the type of lawful and reasonable conduct which is expected from the Parties who ratify the Document. This performativity is further emphasized by the structure of the Draft Preamble: separate numbering for each performative action to be taken by the High Contracting Parties.

The second communicative focus of the Preamble is the action of genocide which is described with words having inherently negative connotational components in their semantic structure. Accordingly, what genocide does is: *defies*, *inflicts*, *deprives*, *destroys*, *is against*. Along with this, genocide is formulated as an action causing *inseparable loss*, *being intentional destruction*, *in violent contradiction with the spirit and aims of the United Nations*, *odious crime*. The cognitive-pragmatic analysis of the piece of discourse also enables us to reveal the desirable conduct against the crime of genocide, as seen and approved by the authors. So the Parties who ratify the Document are expected to oppose, prevent or repress such action.

Hence, we can conclude that the Preamble of the Draft Convention is designed to produce a highly desirable perlocutionary effect – condemnation of genocide.

Turning to the opening part of the UN Convention, we can see to what extent it matches the Draft.

The Contracting Parties

*Having considered the declaration made by the General Assembly of the United Nations in its resolution 96 (I) dated 11 December 1946 that genocide is a crime under international law, contrary to the spirit and aims of the United Nations and condemned by the civilized world, **Recognizing that at all periods of history genocide has inflicted great losses on humanity**, and Being convinced that, in order to liberate mankind from such an odious scourge, international co-operation is required. Hereby agree as hereinafter provided:*

(Convention 1948)

1. This is addressed to the *Contracting Parties*, and makes reference to the General Assembly Resolution 96 (I) dated 11 December 1946 according to which *genocide* is defined as a denial of the right of existence to entire human groups,²¹ as a shock for the conscience of mankind. The analysis shows that albeit the opening of the UN Convention does draw attention to the damage caused to humanity (*has inflicted great losses on humanity*), it does not indicate the losses in the form of cultural and other contributions represented by human groups²². This must be one of the reasons why it sounds more generalized, hence less distinct. The neutrality of the final text as compared with the Draft, can be observed in the substitution of the adjectival word sequence *contrary to the spirit and aims of the United Nations* for *it is in violent contradiction with the spirit and aims of the United Nations* in the Draft. Obvious is the fact that although **contrary** and **contradiction** are elements, semantically more or less contiguous, nevertheless the presence of the adjective **violent** in the word group *violent contradiction* in Lemkin's Draft enriches the negative emotionality in the connotational aspect of the word *contradiction*, makes it more condensed, exacts and enhances the idea that the United Nations will never be indulgent and tolerant of any manifestation of genocide. Thus, the UN Convention sounds more reserved, hence somewhat neutral, which, generally speaking, is quite acceptable for official-documentary style. The rational and logical basis of an international document is, on the one hand, sure to exclude any confusion or arbitrary opinions. However, on the other hand, having in mind the utmost importance of the question of suppressing any genocidal intention for humanity at large we would choose to give preference to the formulation in the Draft as it expresses more determination, and intolerance of genocidal violence.

2. Similarly, we believe that the use of the attributive combination **odious scourge** in the UN text instead of **odious crime** in the Draft again weakens the impression, hence the necessity of intolerant attitude towards barbarity, towards horrendous genocidal events which the Contracting Parties should in any case be decisive not only to condemn, but also to prevent and punish. *Scourge* is a more general word²³ associated with wars, diseases, etc. But anybody who has a more or less clear idea of what a genocide is, let alone those who have experienced it and survived by chance, understand very well that a genocide is much more than just a cause of suffering, it is unimaginably horrible, in fact a crime, a very specific crime which

²¹ This definition renders the difference between the notions of *genocide* and *homicide*. The latter, which also means an act of murder, is the denial of the right to live of individual human beings. Cf. **Cambridge Advanced Learner's Dictionary** (2008) Third edition. Cambridge: Cambridge University Press, p. 691.

²² The first draft of the Convention (what we call Lemkin's Draft) worked out by the UN Secretariat where the Preamble attaches a lot of importance to cultural losses and includes it in the definition of genocide. Cf. <<http://www.preventgenocide.org/law/convention/drafts/>>Accessed [October 15, 2015].

²³ **Oxford Advanced Learners Dictionary of Current English** by A.S. Hornby defines *scourge* as «whip for flogging persons, cause of suffering, instrument of vengeance and punishment» (Oxford: Oxford University Press, 1974, p.761).

requires a very severe punishment, particularly in that it is usually intended and scrupulously pre-planned.

3. Many instances of such genocidal crimes have occurred, many racial, religious, political and other groups have been destroyed, either entirely or in part. Thus, the punishment of the crime of genocide is, indeed, a matter of international concern. Therefore all acts of genocide committed whether by private individuals, public officials or statesmen on national, religious, racial, political or any other above-mentioned grounds should be internationally punishable.²⁴

4. Thus, as compared with the Preamble of Lemkin's Draft, the style of the opening part of the UN Convention is damped down. Besides, there are formulations in this piece of discourse, describing abstract collectivistic notions: *international law; the civilized world; all periods of history; humanity; mankind; international co-operation*, which, in a sense, diverge the attention of the addressee from concrete decisions and concrete actions.

Analyzing the Preamble from a pragmatic perspective, we can conclude that the above-mentioned communicative focuses have been preserved here. Hence, we can observe the doer of the desirable action (*The Contracting Parties*) and the deplorable action against which the Document was released. However, our analysis reveals a marked change in the pragmatic intent of the discourse. First of all, as different from the text of Lemkin's Draft Convention, the extract lacks the high degree of performativity due to the change in the structure. The given piece of discourse is presented in the form of an extended complex-composite sentence with a subordinate clause of manner, where the actions presented in the form of Participle I denote some past action (*having considered*), or state of the doer of action (*recognizing, being convinced*). Interestingly, all of them are mental actions, done through one's power of mind, contrary to the performatives in the Draft, which denote locutive acts, that is verbal actions, like *proclaiming, pledging, appealing*, etc. As a result of the mentioned structural differences the obligation for the Contracting Parties to take certain desirable actions, highlighted in the Draft, is somewhat veiled in the text of the UN Convention. The last utterance of the extract is an explicit performative whereby the doer of the action performs a commissive act, namely, agrees to conform with the requirements coming next: *Hereby agree as hereinafter provided*. This act of agreement is a legal cliché ordinarily used in official documents.

The second communicative focus of the Preamble – the action of genocide, in the discourse of the UN Convention is quite naturally again presented with words having negative expressive-emotional-evaluative overtones which, however, are weaker than those used in the Draft. Thus, genocide is presented as *an odious scourge, a contrary action* which is condemned as it inflicts great losses.

²⁴ It is not a mere chance that the General Assembly Resolution 96 (I) invites Member States to enact the necessary legislation for the prevention and punishment of the crime of genocide and recommends that international cooperation be organized between them to facilitate the speedy prevention and punishment of it (Fifty-fifth plenary meeting, 11 December 1946. United Nations General Assembly Resolution 96 (I), *The Crime of Genocide* 1946, pp. 188-189).

The cognitive-pragmatic analysis of the piece of discourse also enables us to cognize the desirable conduct against the crime of genocide. The difference revealed between the two pieces of discourse again lies in the field of syntax and the logical structuring of the idea. Thus, the actions expected from the Contracting Parties are linguistically formulated with the help of passive constructions, whereby the doer of the action is veiled and, naturally, the prescribed actions, namely, condemning (*is condemned*), or requiring (*is required*) sound less resolute and urgent.

Our comparative analysis enables us to conclude that the wording of the opening part of the 1948 UN Convention is somewhat vague, and designed so as to produce a moderate perlocutionary effect – condemnation of genocide. However, for us from the point of view of the Armenian Genocide, which happened long before the ratification of the 1948 Convention, of particular interest is the final part of the Document which reads:

..., Recognizing that at all periods of history genocide has inflicted great losses on humanity, and Being convinced that, in order to liberate mankind from such an odious scourge, international co-operation is required.

Indeed, there can be no doubt that the damage (physical, cultural, psychological, moral, etc.) inflicted on humanity by genocides is so great that the temporal category, in fact, loses its sense, for genocides must be avoided like the plague, irrespective of when and where they happen, and genocidal intents and attitudes should be weeded out of human mentality, as well as experience. Thus, this formulation in the Convention inspires belief that International law will one day recognize the liability of today's Turkey for the Genocide of Armenians accomplished by their predecessors. Therefore, vain are the attempts of the pro-denialist scholars who, on the pretext of the UN Convention being ratified only in 1951, reject the possibility of defining the 1915 horrendous events in Western Armenia as genocide. Pushing forward their formal arguments, they ignore a very important source of international law, namely – the customary international law. The latter, though unwritten, however is an established form of international norm (*Opinio juris*), the presence of which is borne out by the official declaration of Great Britain, France and Russia promulgated on 24 May 1915, where they defined the Armenian Genocide as a crime against humanity and declared the liability of the Turkish government for the crime.²⁵ There is another fact, too, to be taken into consideration: the Holocaust also occurred before the final adoption of the UN Convention on genocide, but it was recognized and condemned by International Tribunal. According to international law Turkey's liability cannot be of punitive nature. But, as a State responsible for the delinquent actions of its predecessors, Turkey must do its best to restore the situation that preceded the crime (restitution). If restitution is impossible to implement, it should provide adequate compensation (financial or material). If this is not possible either, it should finally seek reparation

²⁵ Margaryan V., 2011, 331–339. <<http://am.am/arm/news/142/hayoc-cexaspanutyuny-orpes-mijazgayin-hancagortsutyun.html>> Accessed [May 2, 2016]

through satisfaction (which covers a range of acts beginning from a simple apology for damage or loss sustained, to territorial compensation). Thus, in this way the consequences of the crime could be recognized as fully eliminated.²⁶

To sum up I would first of all like to agree that the 1948 Convention on the Prevention and Punishment of the Crime of Genocide is one of the most important achievements of humanity, and of the experts in human rights. Alongside the legal definition of genocide, rooted in the Convention and confirmed in subsequent case law, there is a legal basis aimed at prevention and punishment of this most serious crime.

We also have to agree on how great the value of Raphael Lemkin's genocide discourse is, from both legal and humanistic points of view. Its paramount importance can never be repudiated, for it is intended to protect an essential interest of the international community.

However, as our comparative research shows, a somewhat restrictive approach has been applied to the creation of the final text, and some discursive features typical of the Draft language have been ignored. It is revealed in reformulated definitions which sometimes veil the clarity of ideas and the determined negative attitude towards all possible manifestations of genocide. As a result, lexical, morphological and syntactic changes introduced in the final text have reduced the strategic consistency of the text, weakened the expression of intolerance of genocides in the world and determination to punish the perpetrators whoever they be.

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²⁶ Hraczruc: Vladimir Vardanyani. Shant TV, Armenia. 24 April, 2015. <<https://www.youtube.com/watch?v=HQFwyqLLA1c>> Accessed [April 30, 2016]

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ՌԱՖԱՅԵԼ ԼԵՄԿԻՆԸ
ԵՎ 1948 ԹՎԱԿԱՆԻ ՄԱԿ-Ի ՑԵՂԱՍՊԱՆՈՒԹՅԱՆ
ԿՈՆՎԵՆՑԻԱՆ

ԱՄՓՈՓՈՒՄ

Հոդվածում ամփոփված են հատվածներ ՀՀ Գիտության պետական կոմիտեի հովանավորությամբ իրականացվող ծրագրի շրջանակներում կատարված ուսումնասիրությունից: Սույն ծրագիրն առնչվում է 1948թ. ՄԱԿ-ի կողմից ընդունված Ցեղասպանության հանցագործությունը կանխարգելելու և պատժելու մասին կոնվենցիային և գլխավորապես նպատակ ունի ուսումնասիրելու հիշյալ կոնվենցիայի շարադրանքի բառային, իմաստային, ոճական և գործարանական առանձնահատկությունները՝ դրանք համեմատելով կոնվենցիայի լեմկինյան նախագծի հետ:

Վերոնշյալ փաստաթղթերի տեքստերը դիտարկվում են որպես ցեղասպանական դիսկուրսի նմուշներ: Լեզվական զուգադիր ուսումնասիրությունը, որը ներառում է ինչպես ընդհանուր անդրադարձներ, այնպես էլ այս խնդրի շուրջ առկա կոնկրետ տեսական մեկնաբանություններ, բացահայտում է մի շարք ճանաչողական- գործարանական խնդիրներ, որոնք կապված են մարդկության մեծագույն ոճրագործություններից մեկի՝ ցեղապանության հարցում պաշտոնական գրաքննության լեզվական արտահայտության հետ:

Փորձ է արվում ընդգծել Ռաֆայել Լեմկինի անուրանալի դերը միջազգային իրավունքի վերաձևակերպման գործում, որով նա աշխարհին ներկայացրեց մարդու իրավունքների միանգամայն նոր մեկնաբանություն:

Հայտնի է, որ ՄԱԿ-ի՝ 1948 թվականին ընդունված կոնվենցիան Միացյալ ազգերի կազմակերպության Գլխավոր Ասամբլեայի առաջին փաստաթուղթն է մարդու իրավունքների վերաբերյալ, որը ուշադրություն է հրավիրում ազգային, ռասայական, էթնիկ և կրոնական այն փոքրամասնությունների պաշտպանությանը, որոնք ապրում են բնաջնջման մշտական սպառնալիքի պայմաններում: Փաստաթուղթն ակնհայտորեն միտում ունի արմատախիլ անել ռասիզմը, խտրականությունն ու քսենոֆոբիան: Ավելին՝ այն ընդգծում է, որ մարդու իրավունքների պաշտպանության խնդիրը լուծելի է օրենքի շրջանակներում, եթե քրեական պատասխանատվության ենթարկվեն այդ իրավունքները ոտնահարողները: Այսուհանդերձ, Կոնվենցիան հաճախ է քննադատության ենթարկվում սահմանափակ ընդգրկման պատճառով: Հայտնի է, որ այն չի անդրադառնում մշակութային ժառանգության ոչնչացման վանդալիստական դրսևորումներին և չի ներառում նաև

մարդկանց քաղաքական և լեզվական խմբերի նկատմամբ կիրառվող բարբարոսական գործողությունների խնդրին:

Իրավունքի գիտակ Վիլիամ Շաբասի համոզմամբ՝ ցեղասպանությունը հոմոսեքսուալների ոմոսեքսուալ և ուղղված է համայն մարդկության դեմ: Միջազգային իրավունքն, անշուշտ, որոշակի դժվարություն ունի մասսայական վայրագությունները կանխարգելելու հարցում, և, ինչպես ցույց է տալիս պատմական փորձը, այդ դժվարությունը կարող է հաղթահարվել ոչ այնքան հցեղասպանություն՝ հասկացության սահմանները ընդլայնելու կամ Կոնվենցիան բարենորոգելու ճանապարհով, այլ այն գիտակցության ամրակայմամբ, որ այդ ոմոսեքսուալներն առնչվում է մարդկության դեմ կատարված ոմոսեքսուալությունների հասկացությանը:

Ուսումնասիրությունը ցույց է տալիս, որ Ցեղասպանության կոնվենցիայի ընդունման ճանապարհը դժվար է եղել: Այն իրականություն է դարձել մեծ թվով օրենսդիրների, իրավաբանների, քաղաքագետների համառ, կառուցողական ու համագործակցված ջանքերի շնորհիվ: Սակայն այս գործում հսկայական ավանդ ունի ծագումով հրեա, լեհ լեզվաբան ու օրենսգետ Ռաֆայել Լեմկինը (1900-1959), որն իր գործում մասնակցությունը բերեց ցեղասպանության համաշխարհային պատմության ուսումնասիրման, այդ խնդիրը միջազգային իրավունքի դաշտ տեղափոխելու և միջազգային համագործակցության շրջանակներում այն քրեորեն պատժելի դարձնելու գործին:

Ռաֆայել Լեմկինը մեծ մտավորական էր, ժամանակակից բարոյագիտական մտքի հսկաներից, և, եթե ընդունենք, որ արևմտյան բարոյականությունը մարդկային դաժանություններին դիմակայելու ու դրանց դեմ ընդվզելու անվերջանալի պատմություն է, ապա Լեմկինը մարդկանց խմբերի դեմ իրականացված դաժանությունների դեմ և նրանց իրավունքների համար պայքարող ամենաաննկուն մարտիկն է: Լեմկինի տաղանդը դրսևորվեց միջազգային իրավունքը վերաձևավորելու, մարդու իրավունքների համաշխարհային ընկալման մեջ միանգամայն նոր մոտեցում առաջ քաշելու և, դրանով իսկ, մարդու իրավունքների պատմության վրա նշանակալի ազդեցություն գործելու հարցում:

Դեռևս համալսարանական տարիներից ի վեր Լեմկինին հետաքրքրել և խորապես հուզել է ցեղասպանության խնդիրը և անարդարությունն ու բռնություն չհանդուրժող նրա երիտասարդ հոգում վճռականություն ծնել՝ դատապարտելու մարդկության դեմ պարբերաբար կիրառվող այդ անհանդուրժելի ոմոսեքսուալ: Դեռևս ուսումնառության տարիներին նա հետևողական փորձեր է ձեռնարկել հայկական ջարդերի հարցը օրենսդրական դաշտ դուրս բերելու ուղղությամբ: Բազմաթիվ կարծիքներ կան այն մասին, որ Լեմկինի հետաքրքրությունն ու նախաձեռնողականությունը «ցեղասպանություն» հասկացության պարզաբանման, հստակ ձևակերպման, իսկ հետագայում նաև գիտաբանի ստեղծման ընթացքում նրա համար ելակետային են եղել հայերի և ասորիների՝ թուրքերի կողմից իրագործված բնաջնջման փորձերը: Իհարկե, կա նաև այն կարծիքը, թե «ցեղասպանություն» հասկացությունն առաջին անգամ գործածել և իրավական առումով կիրառության մեջ է դրել Արմին Վեգները իր “Vernichtung einer Rasse” աշխատության մեջ “Völkermord” գերմաներեն արտահայտությամբ (տես Ա. Մուշեղյան, Արմին Վեգները Ցեղասպանություն իրավական տերմինի հեղինակ: // Ազգ. No 7, 23. 04):

Ինչ էլ որ լինի ակնհայտ է, որ Ռաֆայել Լեմկինի դերն անգնահատելի է ցեղասպանություն երևույթը՝ որպես մարդկության համար նյութական ու բարոյական գերագույն սպառնալիք որակելու հարցում:

Ցեղասպանության 1948 թվականի ՄԱԿ-ի Կոնվենցիայի և Կոնվենցիայի լեմկինյան Նախագծի տեքստերի զուգադրական վերլուծությամբ պարզում ենք, որ Կոնվենցիայի վերջնական շարադրանքում անտեսված են լեմկինյան նախագծին բնորոշ բառային, ձևաբանական, շարահյուսական, ոճական կիրառություններ ու ճանաչողական ռազմավարություններ, որոնք միջազգային իրավունքի այս կարևորագույն փաստաթղթում առավել հստակ ու տեսանելի կդարձնեին միջազգային հանրության հիմնարար շահերը պաշտպանելու ՄԱԿ-ի վճռականությունը:

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РАФАЭЛЬ ЛЕМКИН И КОНВЕНЦИЯ ООН О ГЕНОЦИДЕ ОТ 1948 ГОДА

РЕЗЮМЕ

В статье собраны фрагменты из исследования, проделанного в рамках проекта, осуществляемого при поддержке Государственного комитета науки РА. Целью данного проекта является исследование лексических, стилистических и прагматических особенностей текста принятой ООН в 1948 году Конвенции о предупреждении геноцида и наказании за него в сравнении с лемкинским Проектом конвенции.

Тексты вышеупомянутых документов рассматриваются как образцы дискурса о геноциде. Сопоставительное лингвистическое исследование, которое включает в себя как общие обсуждения, так и конкретные теоретические интерпретации, существующие по этой проблеме, выявляет ряд когнитивно-прагматических проблем, связанных с языковой реализацией официальной цензуры по поводу одной из страшнейших преступлений человечества – геноцида.

Делается попытка подчеркнуть неоспоримую роль Рафаэля Лемкина в деле преобразования международного права, в представлении миру совершенно новой интерпретации прав человека.

Известно, что Конвенция ООН от 1948 года – первый документ о правах человека Генеральной Ассамблеи Организации Объединенных Наций, который привлекает внимание к защите национальных, расовых, этнических, религиозных меньшинств, живущих в условиях постоянной угрозы уничтожения. Документ явно нацелен на искоренение расизма, дискриминации и ксенофобии. Более того, в нем подчеркивается, что проблема защиты прав человека может получить решение в рамках закона, если будут привлекаться к уголовной ответственности те, кто попирает эти права. Тем не менее, Конвенция часто подвергается критике за ограниченность охвата. Известно, что в ней не отражаются проблемы вандалистских проявлений уничтожения культурного наследия и варварских действий, применяемых по отношению к политическим и языковым группам людей.

По убеждению специалиста по праву Уильяма Шабаса, геноцид – «преступление преступлений» и направлен против всего человечества. Международное право, безусловно, имеет определенные трудности в вопросе предотвращения массовых зверств, и, как показывает исторический опыт, эти трудности могут

быть преодолены не столько путем расширения границ понятия «геноцид» или реформирования Конвенции, сколько путем укрепления сознания того, что это преступление тесно соотносится с понятием преступлений, совершаемых против человечества.

Исследование показывает, что принятие Конвенции о геноциде не было легким процессом. Она стала реальностью благодаря упорным, конструктивным и скоординированным усилиям многочисленных законодателей, юристов и политологов. Но в этом деле огромный вклад имеет польский лингвист и правовед еврейского происхождения Рафаэль Лемкин (1900-1959), который сыграл значительную роль в деле исследования мировой истории геноцида, перенесения этой проблемы в поле международного права и превращения геноцида в уголовно наказуемое преступление в рамках международного сотрудничества.

Рафаэль Лемкин был большим мыслителем, одним из великих представителей современной нравственной мысли, и если принять, что западная нравственность – бесконечная история противостояния человеческой жестокости и сопротивления ему, то Лемкин – самый неутомимый борец против жестокости, совершаемой по отношению к группам людей, и за их права. Талант Лемкина проявился в реформировании международного права, в выдвижении совершенно нового подхода в мировом восприятии прав человека и тем самым оказанию значительного влияния на историю прав человека.

Еще с университетских лет Лемкина интересовала и глубоко трогала проблема геноцида, которая в его нетерпящей несправедливости и насилия молодой душе породила решимость осуждать это неприемлемое преступление, периодически совершаемое против человечества. Еще в годы учебы он предпринимал последовательные попытки в направлении введения в правовое поле вопроса массовых истреблений армян. Существуют многочисленные мнения о том, что в проявлении интереса и инициативы Лемкиным при разъяснении, четкой формулировке понятия, а в дальнейшем и при создании термина «геноцид» исходными для него были попытки уничтожения армян и ассирийцев турками. Конечно, есть также мнение, что понятие «геноцид» был впервые применен и введен в употребление в правовом значении Армином Вегнером в работе “Vernichtung einer Rasse” в выражении “Völkermord” (см. Ա. Մուշեղյան, *Արմին Վեգները Յեղիսույանության հրախալի տերմինի հեղինակ*: // Ազգ. No 7, 23. 04).

Как бы то ни было, очевидно, что роль Рафаэля Лемкина неоценима в вопросе определения явления геноцид как высшей материальной и моральной угрозы для человечества.

При сопоставительном анализе текстов Конвенции ООН о геноциде от 1948 года и лемкинского Проекта Конвенции выявляем, что в конечном тексте Конвенции игнорированы характерные лемкинскому Проекту определенные лексические, морфологические, синтаксические, стилистические проявления и когнитивные стратегии, которые в этом важнейшем документе международного права сделали бы более четкой и видимой решимость ООН защищать фундаментальные права международного сообщества.