

GENOCIDE IN INTERNATIONAL LAW

THIRD EDITION

The 1948 Genocide Convention is a vital legal tool in the international campaign against impunity. Its provisions, including its enigmatic definition of the crime and its pledge both to punish and to prevent the 'crime of crimes', have been considered in important judgments by the International Court of Justice, the international criminal tribunals and domestic courts. Since the second edition appeared in 2009, there have been important new judgments as well as attempts to apply the concept of genocide to a range of conflicts. Attention is given to the concept of protected groups, to problems of criminal prosecution and to issues of international judicial cooperation, such as extradition. The duty to prevent genocide and its relationship with the doctrine of the 'responsibility to protect' are also explored.

WILLIAM A. SCHABAS OC MRIA is Professor of International Law at Middlesex University London and emeritus professor at Leiden University and the University of Galway. The author of many books and journal articles on the subject of international human rights law and international criminal law, Schabas served as an international member of the Sierra Leone Truth and Reconciliation Commission (2002 to 2004) and chairman of the commission of inquiry into the Gaza conflict established by the United Nations Human Rights Council in 2014. He has appeared before the International Court of Justice and the Grand Chamber of the European Court of Human Rights in cases concerning genocide. He is an Officer of the Order of Canada and a Member of the Royal Irish Academy.

GENOCIDE IN INTERNATIONAL LAW

The Crime of Crimes

THIRD EDITION

WILLIAM A. SCHABAS

Middlesex University London



CAMBRIDGE
UNIVERSITY PRESS

Cambridge University Press & Assessment
978-1-009-46078-1 — Genocide in International Law
William A. Schabas
Frontmatter
[More Information](#)



CAMBRIDGE
UNIVERSITY PRESS

Shaftesbury Road, Cambridge CB2 8EA, United Kingdom

One Liberty Plaza, 20th Floor, New York, NY 10006, USA

477 Williamstown Road, Port Melbourne, VIC 3207, Australia

314–321, 3rd Floor, Plot 3, Splendor Forum, Jasola District Centre, New Delhi – 110025, India

103 Penang Road, #05-06/07, Visioncrest Commercial, Singapore 238467

Cambridge University Press is part of Cambridge University Press & Assessment,
a department of the University of Cambridge.

We share the University's mission to contribute to society through the pursuit of
education, learning and research at the highest international levels of excellence.

www.cambridge.org

Information on this title: www.cambridge.org/9781009460811

DOI: 10.1017/9781009460774

© William A. Schabas 2000, 2009, 2025

This publication is in copyright. Subject to statutory exception and to the provisions
of relevant collective licensing agreements, no reproduction of any part may take
place without the written permission of Cambridge University Press & Assessment.

When citing this work, please include a reference to the DOI 10.1017/9781009460774

First published 2000

Second edition 2009

Third edition 2025

Cover image: Shoes of victims displayed at Auschwitz camp of Auschwitz-Birkenau Memorial
State Museum. Image: Dennis Cox / Alamy Stock Photo

A catalogue record for this publication is available from the British Library

A Cataloging-in-Publication data record for this book is available from the Library of Congress

ISBN 978-1-009-46081-1 Hardback

ISBN 978-1-009-46078-1 Paperback

Cambridge University Press & Assessment has no responsibility for the persistence
or accuracy of URLs for external or third-party internet websites referred to in this
publication and does not guarantee that any content on such websites is, or will
remain, accurate or appropriate.

For EU product safety concerns, contact us at Calle de José Abascal, 56, 1º, 28003 Madrid,
Spain, or email eugpsr@cambridge.org

Cambridge University Press & Assessment
978-1-009-46078-1 — Genocide in International Law
William A. Schabas
Frontmatter
[More Information](#)

To my parents, Ann and Ezra

CONTENTS

<i>Preface to the First Edition</i>	ix
<i>Acknowledgements</i>	xiii
<i>List of Abbreviations</i>	xv
Introduction	1
1 Origins of the Legal Prohibition of Genocide	14
2 Drafting of the Genocide Convention	43
3 Subsequent Normative Developments	86
4 Groups Protected by the Convention	152
5 The Specific Intent to Commit Genocide	213
6 Punishable Acts of Genocide	279
7 Cultural Genocide, Ethnic Cleansing and Other Acts Not Punishable under the Convention	325
8 ‘Other Acts’ of Genocide	363
9 Defences to Genocide	429
10 The Duty to Punish Genocide	463
11 Prosecution of Genocide by International Criminal Tribunals	538
12 State Responsibility and the Role of the International Court of Justice	562
13 Prevention of Genocide	598

viii	CONTENTS	
14	Activity of International Organizations	648
15	Treaty Law Questions and the Convention	722
	Conclusions	787
	<i>Bibliography</i>	803
	<i>Index</i>	853

PREFACE TO THE FIRST EDITION

The legal questions involved in studying genocide draw on three areas of law: human rights law, international law and criminal law. These are all subjects that I have both taught and practised. This alone ought to be sufficient to explain my interest in the subject. But there is more. Of the three great genocides in the twentieth century – those of the Armenians, the Jews and Gypsies and the Tutsi – my life has been touched by two of them.

My grandparents on my father's side, and my ancestors before them for generations, came from Kosova and Berezhany, towns in what was once called Eastern Galicia. Located in the general vicinity of the city of Lviv, they are now part of Ukraine. Essentially nothing remains, however, of the Jewish communities where my grandparents were born and raised. In the months that followed the Nazi invasion of the Soviet Union, the Einsatzgruppen murdered as many as two million Jews who were caught behind the lines in the occupied territories. On 16–17 October 1941, in a German Aktion, 2,200 Jews, representing about half the community of Kosova, were taken to the hill behind the Moskalowka bridge and executed. Parts of the population of both towns, Berezhany and Kosova, were deported to the Belzec extermination camp. As the Germans were retreating, after their disastrous defeat at Stalingrad in January 1943, the executioners ensured they would leave no trace of Jewish life behind. It is reported that more Jews were killed in Berezhany on 2 June 1943, and in Kosova on 4 June 1943, a 'final solution' carried out while the Soviet forces were still 500 km away. The victims were marched to nearby forests, gravel pits and even Jewish cemeteries where, according to Martin Gilbert, 'executions were carried out with savagery and sadism, a crying child often being seized from its mother's arms and shot in front of her, or having its head crushed by a single blow from a rifle butt. Hundreds of children were

thrown alive into pits, and died in fear and agony under the weight of bodies thrown on top of them'.¹

Although my grandparents had immigrated to North America many years before the Holocaust, some of my more distant relatives were surely among those victims. My great uncles fled Germany for Argentina at the end of the 1930s while a great aunt managed to survive the war, hidden in Berlin. Several of the leaders of the *Einsatzgruppen* were successfully tried after the war for their role in the atrocities in Berezghany, Kosova and thousands of other European Jewish communities of which barely a trace now remains. The prosecutor in the *Einsatzgruppen* case, Benjamin Ferencz, a man I had the honour to befriend, used the neologism 'genocide' in the indictment and succeeded in convincing the court to do the same in its judgment.²

Exactly fifty years after the genocide in my grandparents' towns, I participated in a human rights fact-finding mission to a small and what was then an obscure country in central Africa: Rwanda. I was asked by Ed Broadbent and Iris Almeida to represent the International Centre for Human Rights and Democratic Development as part of a coalition of international non-governmental organizations interested in the Great Lakes region of Africa. The mission visited Rwanda in January 1993, mandated to assess the credibility and the accuracy of a multitude of reports of politically and ethnically based crimes, including mass murder, that had taken place under the regime of President Juvénal Habyarimana since the outbreak of civil war in that country in October 1990. At the time, a terrifying cloud hung over Rwanda, the consequence of a speech by a Habyarimana henchman a few weeks earlier that was widely interpreted within the country as an incitement to genocide. We interviewed many eyewitnesses, but our fact-finding went further. In an effort to obtain material evidence, we excavated mass graves, thus confirming reports of massacres we had learned of from friends or relatives of the victims.

¹ Martin Gilbert, *Atlas of the Holocaust*, Oxford: Pergamon Press, 1988, p. 160. See also Israel Gutman, *Encyclopedia of the Holocaust*, vol. I, New York: Macmillan, 1990, pp. 184–5.

² *United States v. Ohlendorf et al.* ('*Einsatzgruppen* case'), Opinion and Judgment, 8–9 April 1948 (1949) 4 TWC 411 (United States Military Tribunal), pp. 450, 451, 469. For a tribute to Benjamin Ferencz, who died in 2023, see William Schabas and Joseph Powderly, "'A Plea of Humanity to Law': In Memoriam for Benjamin Berell Ferencz (1920–2023)" (2023) 36 *Leiden Journal of International Law* 819.

At the time, none of us, including myself, had devoted much study if any to the complicated legal questions involved in the definition of genocide. Indeed, our knowledge of the law of genocide rather faithfully reflected the neglect into which the norm had fallen within the human rights community. Yet faced with convincing evidence of mass killings of Tutsi, accompanied by public incitement whose source could be traced to the highest levels of the ruling oligarchy, the word ‘genocide’ sprung inexorably to our lips. Rereading the definition in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide helped confirm our conclusion. In a press release issued the day after our departure from Rwanda, we spoke of genocide and warned of the abyss into which the country was heading. The term seemed to fit. Our choice of terminology may have been more intuitive than reasoned, but history has shown how closely we came to the truth. Three months after our mission, Special Rapporteur Bacre Waly Ndiaye visited Rwanda and essentially endorsed our conclusions. He too noted that the attacks had been directed against an ethnic group and that article II of the Genocide Convention ‘might therefore be considered to apply’.³ In his 1996 review of the history of the Rwandan genocide, Secretary-General Boutros Boutros-Ghali took note of the significance of our report.⁴ Later, members of the Security Council cited Ndiaye’s warning and noted that ‘hardly anyone paid any attention’ at the time.⁵

Four months after the Rwandan genocide, I returned to Rwanda as part of an assistance mission to assess the needs of the legal system and, more specifically, the requirements for prompt and effective prosecution of those responsible for the crimes. Over the past five years, much of my professional activity has been focused on how to bring the génocidaires to book. I have been back to Rwanda many times since 1994 and participated, as a consultant, in the drafting of legislation intended to facilitate genocide prosecutions. The International Secretariat of Amnesty International sent me to Rwanda in early 1997 to observe the *Karamira* trial, the first major genocide prosecution under national law in that country, or, for that matter, in any country, with the exception of the *Eichmann* case. I have since attended many other trials of those

³ Report by Mr B. W. Ndiaye, Special Rapporteur, on his mission to Rwanda from 8 to 17 April 1993, E/CN.4/1994/7/Add.1 (11 August 1993), para. 79.

⁴ Boutros Boutros-Ghali, ‘Introduction’, in *The United Nations and Rwanda, 1993–1996*, New York: United Nations Department of Public Information, 1996, pp. 1–111, at p. 20.

⁵ S/PV.4127 (14 April 2000), p. 5.

charged with genocide, both within Rwanda and before the International Criminal Tribunal for Rwanda, in Arusha, Tanzania, including the *Akayesu* trial, the first international prosecution pursuant to the Genocide Convention. I have also devoted much time to training a new generation of Rwandan jurists, lecturing regularly on criminal law and on the specific problems involved in genocide prosecutions as a visiting professor at the law faculty of the Rwandan National University. On 2 September 1998, I took a break from teaching the introductory criminal law class to 140 eager young Rwandans, and we all spent the morning listening attentively on the radio to Laïty Kama, president of the International Criminal Tribunal for Rwanda, as he read the first international judgment convicting an individual of the crime of genocide.

But I have also spent many hours with genocide survivors, and I have visited the melancholy memorials to the killings. The smell of the mass graves cannot be forgotten and, like the imagined recollections of my grandparents' birthplace, it has its own contribution to what sometimes may seem a rather dry and technical study of legal terms. There is more passion in this work than may initially be apparent.

ACKNOWLEDGEMENTS

I wish to thank the Social Sciences and Humanities Research Council of Canada for a research grant and for the Bora Laskin Research Fellowship in Human Rights. The first edition of this work was completed while on sabbatical leave from the University of Quebec at Montreal, when I held a Jennings Randolph Senior Fellowship with the United States Institute of Peace in Washington. I hereby acknowledge my great appreciation for the Institute's support. The help and encouragement from my many colleagues at the United States Institute of Peace, but particularly Neil Kritz, Bill Stuebner, John Crist and Joe Klaitz, is fondly recalled. A term as visiting professor at the University of Montpellier in 1998, the guest of Frédéric Sudre and Michel Levinet, gave me the opportunity for an intensive period of writing on an early draft of a portion of the manuscript.

The second edition was completed in 2007–8, while on sabbatical leave from the National University of Ireland, Galway. I spent part of the year at Cardozo Law School of Yeshiva University in New York and part at LUISS Guido Carli University in Rome. Both institutions gave me the time and the appropriate intellectual environment to review developments over the nine years since the first edition.

The third edition was prepared in 2023 and early 2024, written in the margins of other academic obligations at Middlesex University London where I have been Professor of International Law since 2010. I am most grateful to Middlesex for allowing me the time to pursue my research work in international law.

Besides providing time and travel funds, my various research grants also blessed me with several gifted assistants with whom it was always a pleasure to work: Véronique Brouillette, Sophie Dorneau, Geneviève Dufour, Niru Kumar, Véronique Robert-Blanchard and particularly Cecilie Lund. Many colleagues and friends encouraged and assisted me with various aspects of my research. Inevitably, my colleagues and I will disagree about some of the many difficult issues in this field. I have great

respect for their views and know that our debates will continue as the subject evolves. Of course, the views expressed here are my own. I wish to thank particularly Elizabeth Abi-Mershed, Howard Adelman, Carmel Agius, Manjida Ahamed, Anees Ahmed, Catarina Albuquerque, Jaye Alderson, Kai Ambos, Cécile Aptel, M. Cherif Bassiouni, Chaloka Beyani, Katia Boustany, Rowly Brucken, Christina Cerna, Frank Chalk, Roger Clark, Emmanuel Decaux, René Degni-Segui, Deng Heping, Rokhaya Diarra, Fidelma Donlon, Chile Eboe-Osuji, Norman Farrell, Don Ferencz, Jim Fussell, Margaret deGuzman, Bernard Hamilton, Frederick Harhoff, Kristine Hermann, Martin Imbleau, Laïty Kama, Ben Kiernan, Claus Krefß, Anne-Marie La Rosa, Liu Daqun, Ben Majekodunmi, Linda Melvern, Guénaél Mettraux, Miltos Miliades, David Nanopoulos, Faustin Ntezilyayo, Sasha Obradović, John Packer, Zach Pall, Alain Pellet, Robert Petit, Joseph Powderly, Allan Rock, Wolfgang Schomburg, Dorothy Shea, Wibke Timmermann, Brenda Sue Thornton, Alessandra De Tommaso, Otto Triffterer, Daniel Turp, Nicolai Uscoi, Sienho Yee and Alfred de Zayas. Diplomatic personnel in embassies and governments around the world, too numerous to mention individually, also gave generously of their time in providing me with their domestic legislation on genocide. The reliable professionalism, confidence and support of the personnel of Cambridge University Press, and in particular of Finola O'Sullivan and Marianne Nield, is also gratefully acknowledged.

As always, words fail in expressing my love and thanks to my wife, Penelope Soteriou, and to my daughters, Marguerite and Louisa.

ABBREVIATIONS

AC	Appeal Cases
AI	Amnesty International
AIDI	Annuaire de l'Institut de Droit International
All ER	All England Reports
BFSP	British Foreign and State Papers
BFST	British Foreign and State Treaties
BYIL	<i>British Yearbook of International Law</i>
CERD	Committee on the Elimination of Racial Discrimination
CHRY	<i>Canadian Human Rights Yearbook</i>
CLR	Commonwealth Law Reports
Coll.	Collection of Decisions of the European Commission of Human Rights
Cr App R	<i>Criminal Appeal Reports</i>
Crim LR	<i>Criminal Law Review</i>
CSCE	Conference on Security and Co-operation in Europe
DR	Decisions and Reports of the European Commission of Human Rights
EC	European communities
ECOSOC	Economic and Social Council
EHRR	European Human Rights Reports
ETS	European Treaty Series
F.	Federal Reporter
FCA	Federal Court of Australia
FRUS	Foreign Relations of the United States
HRJ	<i>Human Rights Journal</i>
ICC	International Criminal Court
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
ILC	International Law Commission
ILDC	International Law in Domestic Courts
ILM	<i>International Legal Materials</i>
ILR	<i>International Law Reports</i>

xvi	LIST OF ABBREVIATIONS
IMT	Trial of the Major War Criminals before the International Military Tribunal
JCPC	Judicial Committee of the Privy Council
JDI	<i>Journal de droit international</i>
JICJ	<i>Journal of International Criminal Justice</i>
KB	King's Bench
L Ed	Lawyer's Edition
LNA	League of Nations Archives
LNTS	League of Nations Treaty Series
LRC	Law Reports of the Commonwealth
LRTWC	Law Reports of the Trials of the War Criminals
Martens	Martens Treaty Series
NAC	National Archives of Canada
NACP	National Archives (College Park, Maryland)
NYPL	New York Public Library
NILR	<i>Netherlands International Law Review</i>
OAS	Organization of American States
OASTS	Organization of American States Treaty Series
OAU	Organization of African Unity
Res.	Resolution
RGD	Revue générale de droit
RSC	Revised Statutes of Canada
SC	Supreme Court
SCR	Supreme Court Reports (Canada)
SD	Selected Decisions of the Human Rights Committee
TNA	National Archives (London)
TLR	Times Law Reports
TS	Treaty Series
TWC	Trials of the War Criminals
UKTS	United Kingdom Treaty Series
UN	United Nations
UNAMIR	United Nations Assistance Mission in Rwanda
UNCIO	United Nations Conference on International Organization
UNTS	United Nations Treaty Series
UNWCC	United Nations War Crimes Commission
UNYB	United Nations Yearbook
US	United States
USNA	United States National Archives
WCR	War Crimes Reports
Yearbook	Yearbook of the International Law Commission
YECHR	Yearbook of the European Convention on Human Rights
YIHL	Yearbook of International Humanitarian Law