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William A. Schabas. *Genocide in International Law.* Cambridge: Cambridge University Press, 2000. xvi + 624 pp. $175.00 (cloth), ISBN 978-0-521-78790-1.

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A recent exchange on the genocide list focused on whether lawyers "have a monopoly over the use of the term 'genocide' "? That is, should the legal definition of genocide prevail over definitions used by social scientists or historians, on the grounds that genocide is a crime? Of course, this rhetorical question cannot be answered. Professor William A. Schabas, the Director of the Irish Centre for Human Rights and Professor of human rights law at the National University of Ireland, Galway, has done an outstanding job in presenting, in one volume, the legal aspects of the "crime of crimes." In fact, this book represents the first treatise on the international law of genocide in more than two decades. In light of the numerous legal developments concerning the development of the law of genocide, this book will prove to be a welcome addition to the library of any genocide scholar and international legal practitioner.

The author has hit on the main points that a lawyer would analyze in undertaking an examination of allegations of genocide. He first addresses the historical origins of the Genocide Convention, including the negotiating history. He then thoroughly examines the groups protected by the treaty, the physical (actus reus) and mental (mens rea) elements of genocide, and the defences to genocide. He also addresses the prosecution of genocide by international and domestic tribunals and the fascinating issues of state responsibility and the role of the International Court of Justice. He concludes with chapters on the prevention of genocide and treaty law questions raised by the Genocide Convention. As a useful tool for historians, this volume also includes the three principle drafts of the Genocide Convention, permitting scholars to examine the nuances leading to the conclusion of the treaty.

There are two legal venues in which genocide allegations may be advanced: claims by State X that State Y committed genocide against the nationals of either State X or State Y, or allegations that individuals committed genocide. The former involves suits filed by States at the International Court of Justice in The Hague. The latter may involve criminal prosecutions before the International Criminal Tribunal for the former Yugoslavia (ICTY) or the International Criminal Tribunal for Rwanda (ICTR), before national courts (as in the recent case in Belgium concerning four individuals convicted of committing genocide in Rwanda) or, in the future, before the International Criminal Court (ICC). This

book explores both types of legal actions.

The focus of the book is correctly on criminal prosecutions, with the case law of the ICTY and ICTR forming the basis for the analysis. Of the two ad hoc tribunals, the jurisprudence of the ICTR is the more important, given the number of genocide cases that that tribunal has adjudicated. The ICTR has tried nine genocide cases and there are more than 40 individuals awaiting trial on genocide, while the ICTY has only completed two trials involving genocide charges.[1]

The law concerning genocide is relatively simple in theory, although highly complex and difficult to prove in a court. Schabas does a good job of taking the reader through the elements, or legal ingredients which must be proven to establish genocide. In the context of a criminal prosecution, the accused must commit one of the prohibited acts against a member of the protected group with the specific intent to destroy, in whole or in part, the members of that group as such. The author carefully and thoughtfully describes each of these elements, rendering this complex legal topic easily manageable for the non-lawyer, while satisfying the lawyer by providing extensive support for each proposition, through citations to the case law and negotiating history of the treaty.

A quick perusal of the table of contents demonstrates the thorough treatment which Schabas provides. The most difficult element, of course, is the mental state of the accused, the mens rea. It is extremely difficult to establish that a defendant has the specific intent to destroy the members of a group. Perpetrators usually do not manifest such an intent, and thus the prosecutor is usually left with urging the judges to draw such an inference from the evidence of either the context in which the genocide occurs (including the knowledge of the perpetrator with respect to these contextual elements) or the specific acts of the accused.

In at least one area, Schabas has anticipated a development in the law of genocide. He presents an eleven-page discussion on motive (pp. 245-256), tracing the negotiating history of the Genocide Convention and briefly analyzing the relevant case law. The jurisprudence of many jurisdictions, including the ad hoc Tribunals, makes it clear that motive is irrelevant with respect to criminal law. For example, in the Tadic Appeals Judgement, the Appeals Chamber, in the context of crimes against humanity, stated that "purely personal motives" are irrelevant.[2] Schabas writes that while genocide must be "motivated by hatred of the group…[i]ndividual offenders should not be entitled to raise personal motives as a defence to genocide, arguing for instance that they participated in an act of collective hatred but were driven by other factors" (p. 255). The Appeals Chamber in the recently decided Jelisic case, had the following to say about motive: "The personal motive of the perpetrator of the crime of genocide may be, for example, to obtain personal economic benefits, or political advantage or some form of power. The existence of a personal motive does not preclude the perpetrator from also having the specific intent to commit genocide."[3] Thus, the author, based on his extensive knowledge of the law, "predicted" what the court, in interpreting that law, would decide.

Two very minor points detract from an otherwise excellent work. First, Schabas does a meticulous job of detailing the various negotiations that led to the Genocide Convention. This discussion will be of particular interest to international legal historians. However, perhaps too much attention was paid to the various national negotiating positions. For example, certain States raised the same points at numerous stages of the negotiations. The author details these discussions not only in the chapter on the negotiations, but also in his treatment of the substantive areas of the Genocide Convention as well. In this case, the desire to be thorough may be a slight distraction.

Second, although Schabas should not be faulted for legal developments occurring after this book was published, he asserts that "for genocide to take place, there must be a plan, even though there is nothing in the [Genocide] Convention that explicitly requires this" (p. 207). Under the ICC Statute, the issue of an objective contextual element is indeed required. That is, there is a requirement that the genocidal conduct either (1) "took place in the context of a manifest pattern of similar conduct against that group" or (2) that the conduct "could itself effect such destruction."[4]

However, Schabas fails to point out that the Prosecutor for the ICTY and ICTR has consistently argued that there is no such requirement under the statutes governing genocide trials before the ad hoc tribunals. The ICTY Appeals Chamber in the Jelisic appeal recently affirmed that proof of a genocidal plan was not an element of the crime of genocide. In that case, the Appeals Chamber held the following: "The Appeals Chamber is of the opinion that the existence of a plan or policy is not a legal ingredient of the crime. However, in the context of proving specific intent, the existence of a plan or policy may become an important factor in most cases. The evidence may be consistent with the existence of a plan or policy, or may even show such existence, and the existence of a

plan or policy may facilitate proof of the plan."[5]

For the victims and international community as a whole, it is, of course, unfortunate that the ad hoc tribunals face a large number of genocide cases on their dockets. It is to be hoped that Professor Schabas will keep a finger on the pulse of this judicial activity and that this volume will be kept up to date with the likely rapid judicial developments concerning genocide. If the first edition is any indication of his ability to grapple with this deceptively simple, yet very complex crime, future editions will be eagerly anticipated. As a prosecutor who has argued genocide before the ICTY, this reviewer can attest to the fact that Professor Schabas' book is one of the first sources to be consulted when questions arise about the international crime of genocide.

Notes

[1]. See Prosecutor v. Jelisic, Case No. IT-95-10-A, *Judgement*, Appeals Chamber, 5 July 2001, available at: <http://un.org/icty/brcko/appeal/judgement/index.htm$>$, para. 49 [hereinafter "Jelisic Appeal"]. The case of General Krstic (involving Srebrenica) has been completed and is awaiting judgement. In addition, the ICTY commenced a prosecution against Dr. Milan Kovacevic in 1998, but the accused died of a heart attack after the 11th day of his trial. Also, the ICTY Prosecutor advanced genocide charges against Dusko Sikirica for his alleged role as commander of the Keraterm Camp in Prijedor, Bosnia Herzegovina in 1992. However, following the presentation of the prosecution case, the Trial Chamber acquitted the accused on these charges. The reviewer was one of the trial attorneys in this case.

[2]. Prosecutor v. Tadic, Case No. IT-94-1-A, *Judgement*, Appeals Chamber, 15 July 1999, available at: <http://un.org/icty/tadic/appeal/judgement/index.htm$>$, para. 270.

[3]. Prosecutor v. Jelisic, Case No. IT-95-10-A, *Judgement*, Appeals Chamber, 5 July 2001, available at: <http://un.org/icty/brcko/appeal/judgement/index.htm$>$, para. 49 [hereinafter "Jelisic Appeal"].

[4]. UN Document PCNICC/2000/INF/3/Add.2, 6 July 2001, p. 6.

[5]. Jelisic Appeal, para. 48.