

bilateral impunity agreements, although not discussed in any detail, are found to be a problem area in the conclusion. This article could have benefited from an in-depth discussion of these agreements, as well as concrete examples.

This book is factual and in the various essays sets out the present status of international criminal law. With most of the attention focused, rightly, on Africa and the Rwanda Tribunal, this compilation is a welcome contribution to the body of international criminal law and will further its development and debate in time to come.

### **J Quigley *The Genocide Convention: An international law analysis***

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Generally, the term 'genocide' conjures up images of Adolf Hitler and the Nazi's, the Yugoslavia and Rwanda atrocities and the recent events in Darfur, Sudan. However, can the new methods of warfare, such as aerial bombings and nuclear weapons, constitute genocide? Is it possible to commit genocide by mistake? These are some of the questions that are tackled by John Quigley in his book, *The Genocide Convention: An international law analysis*. The work consists of 45 chapters, divided into nine parts. The chapters are concise and easy to understand. The first three parts are introductory, explaining how genocide came to be accepted as a legal norm, while the next four parts analyse the intent-element required for genocide. These deal with prosecutions at the domestic as well as at the international level, as well as with lawsuits in the World Court. Part eight examines lawsuits against states for genocide and asks whether states are able to commit a crime, while the final part deals with the question of the utility of genocide as a legal concept.

Part one, titled 'Outlawing genocide', consisting of three chapters, focuses on the origin of the crime of genocide, the drafting history of the Genocide Convention and the Genocide Convention in the criminal codes of various states. The author discusses how Raphael Lemkin's conception of genocide became that which is now known as the Genocide Convention. The author draws a distinction between genocide and crimes against humanity, such as persecution and extermination. In his analysis he notes that the Yugoslav and Rwandan Tribunals con-

victed perpetrators of both crimes against humanity and for genocide on a single act. In this way, he maintains, 'the tribunals have treated genocide and crimes against humanity as separate offences' (p 14).

The author notes that not all states that have codified the crime of genocide have used the same method of adoption as stipulated in article V of the Genocide Convention. On the one hand, he points out that some states have enacted a penalty for the crime and that they refer to article II as the definition of genocide. These are, for example, the United Kingdom and Ireland. On the other hand, he notes that some states have expanded the qualifying acts in their statutes. For example, Spain's statutory definition includes two acts not specified in article II: sexual assault on a member of the group, and forced removals of the group or of members.

The author further notes that a few states have added to the protected groups in their statutes. For example, Ethiopia added 'political' groups, providing 'whosoever, with intent to destroy, in whole or in part, a national, ethnic, racial, religious or political group' (p 17), while France refers to 'the total or partial destruction of a national, ethnic, racial or religious group or of a group based on any other arbitrary criterion'. The French courts have yet to construe the term 'arbitrary criterion' (p 17). The author also analyses the definition of genocide for non-penal purposes, such as immigration and extradition.

Part two, titled 'Calling to account' and consisting of five chapters, examines the prosecutions of alleged genocide perpetrators under a quasi-genocide statute; without the aid of a genocide statute; under a true genocide statute; prosecution in international courts; and suing in the World Court. The author analyses the domestic laws of the states that have ratified the Convention and incorporated the genocide provision in their criminal codes and its application by domestic courts. The author also analyses state liability; whether a state may be sued in the World Court for its involvement in genocide.

Part three, consisting of four chapters and titled 'Genocide's legal environment', discusses the difficulties faced when it comes to the interpretation of the Genocide Convention. In chapter 9, 'Ex post facto genocide', the author looks at the difficulties of article V of the Genocide Convention, which requires states to enact necessary legislation and to provide for penalties. He notes that article V 'recognises that the Genocide Convention does not provide penalties, but this task falls to the states' (p 64). The expectation was that states would insert provisions on genocide into their penal codes, legislate a penalty and use these provisions to prosecute offenders. However, the author notes that '[n]ot all ratifying states have done so' (p 64). For example, Australia, after ratifying the Convention, did not enact a penal provision, and as a result the courts have decided that there can be no prosecution in Australia for genocide. New Zealand took the view that it did not need to enact a genocide crime as prosecution could be brought under

existing statutes on crimes against the person. The Philippines indicated that it did not intend future penal provisions on genocide to apply to acts committed prior to their enactment.

An important question raised by the author is whether it is possible for the UN Security Council to commit genocide. This is any interesting question, as the Security Council is mandated to deal with threats to, or breaches of, the international peace. How can it be involved in the commission of genocide? In addressing the issue, the author argues that, in its role of protecting international peace, the Security Council may undertake its own military actions. He argues that the role of the Security Council puts it in the position of being responsible for troops in the field and thus makes it, potentially, a perpetrator of a variety of war crimes, and even of genocide. Moreover, the Security Council has the power to take coercive action, short of the use of force, involving economic or diplomatic sanctions. He notes that this power also puts the Security Council in a position to affect the livelihood of a civilian population. The author gives the example of Iraq accusing the Security Council of genocide against its population for the economic sanctions the Security Council imposed on Iraq after the Persian Gulf War. Iraq viewed these sanctions to have caused thousands of foreseeable civilian deaths. It will be interesting to find out how the Security Council responds to this analysis.

Part four examines the requirement of intent for acts directed against particular members of a group. The author argues that, although the mass murders perpetrated in World War II inspired the Genocide Convention, article II does not require killings of large numbers. He contends that article II requires the killing of 'members' without specifying a minimum number. Therefore, in principle, the act could be directed at a single member. The author also inquires about the meaning of intent to destroy a group. He points out that article II does not define the term 'destroy' and suggests two possible ways of intending to destroy: an intent to injure, but short of killing; and an intent to destroy the group's social identity. The author concludes that the physical destruction of a group does not necessarily require the death of its members.

Part five, titled 'The victims of genocide', discusses which groups are protected by the Convention, and how the existence of such groups is determined. The author analyses the meaning of 'the whole or in part' in terms of article II.

Part six, titled 'The scale of genocide', examines the question whether genocide is present when acts are directed against a defined stratum of people within a victim group, where the actor identifies the stratum as critical to the group's existence. The author inquires whether genocide may be committed by an isolated actor whose acts against a victim are modest in scope, and who has little realistic possibility of destroying the relevant victim group. The author concludes that the article II definition is satisfied even if the individual in question does not realistically have

the capacity to carry out the mass killings. The author discusses political groups as a subgroup protected by the Genocide Convention, although article II does not include political groups as a group in its definition. He argues that the logic of finding genocidal intent in the targeting of such subgroups is stronger when a group holds a particular importance to a society, so that its elimination harms the group as a whole. In the case of political opponents, this logic holds.

Part seven, titled 'Techniques of genocide', examines genocidal intent in four situations: ethnic cleansing; destruction of human habitat; aerial bombardments and nuclear attack. Part eight, titled 'Genocide by a state', consists of eight chapters. This is a very interesting part of the book, because the author examines the question of genocide committed by a state. Is it possible for a state to commit a crime? The author argues that, as of 1948, 'there had been no analysis in international law of the acts of a state under the rubric "crime"' (p 232). He goes on to say that, whether a concept of 'state crime' is found in international law, article IX of the Genocide Convention of 1948 does not provide for penal responsibility. Analysing the plain meaning of article IX, the author contends that 'by referring to a state's responsibility "for genocide or for any of the other acts enumerated in article III"', the Convention makes it plain that a state may perpetrate genocide, including conspiracy, incitement, attempt, and complicity' (p 236). Therefore, the author's position is that 'one would not say that a state is "punishable" under article III. Rather, from the wording of article IX, one would say that a state is liable . . . for genocide' (p 236).

The final part, titled 'Why genocide', examines other routes to jurisdiction and notes that the Genocide Convention is not the only international instrument aimed at stopping atrocities. The author inquires whether other mechanisms are available in order to determine how critical a role the Genocide Convention plays. The author investigates whether genocide claims and prosecutions reduce the frequency of atrocities. He begins by examining the significance of action by the International Court of Justice (ICJ). The author points out that, if the ICJ orders a state to stop genocide, there is no guarantee that it will comply. He notes that the UN Security Council, as the enforcement mechanism for the judgments of the ICJ, may force a non-compliant defendant state to honour the ICJ's judgment, adding that the Security Council has hardly been effective in this task. The author does not make any suggestion as to the way in which the Security Council may be effective in this task. Despite its lack of effectiveness, the author notes that a favourable ICJ order is often viewed as significant by a plaintiff state.

This last section discusses the deterrent value of the crime of genocide as well. The author notes that the crime of genocide functions as a supplement to other internationally defined offences, those offences falling into the category of crimes against humanity. He concludes

that genocide holds the prospect, to a greater degree than crimes against humanity, of providing a legal avenue to stopping atrocities before they occur. However, the author believes that no one is able to prove the deterrent effect of genocide. He therefore concludes that '[d]espite its status as the oldest of the major human rights treaties, the Genocide Convention remains a work in progress' (p 284).

This book is practical and topical, as popular opinion is building a case for genocide taking place in Darfur, Sudan. It is definitely recommended for all those interested in the international law of genocide. This book may even be the leading text on the Genocide Convention. The author analyses every angle of the Genocide Convention, going beyond the Convention itself, and discusses genocide in customary international law.

It is difficult to criticise a well-written international law analysis of the Genocide Convention such as this. However, it may be criticised for failing to give background on the Yugoslavia and Rwanda atrocities before discussing the work of the Tribunals, in order to guide those who might not be familiar with such a background. Further, although Africa has a treaty criminalising sexual violence as genocide, namely, the Protocol to the African Charter on the Rights of Women in Africa, adopted in Maputo in July 2003, and which entered into force on 25 November 2005, the author fails to acknowledge this Protocol in his analysis. However, on the whole I believe that this book deserves to be on the shelves of every international lawyer. It deals with contemporary issues in the area of genocide law and is recommended reading for anyone who is keen to learn more about or to reflect on the law of genocide. The author uses authority extensively and hence the book is also a good resource for further research.

**R Murray *The role of national human rights institutions at the international and regional levels. The African experience***

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Rachel Murray's book is probably the first of its kind solely to focus on national human rights institutions (NHRIs) in Africa. Previous works on the subject have generally looked at the NHRIs worldwide. In any case, there is a famine in Africa on works such as this on subjects that are practical to the African project. Murray's book comes in handy for the