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## *Genocide in International Law*

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making isolationist arguments identical to the radical right. Feher deftly describes the odd position that the Kosovo intervention put these critics in and the contradictions of their critiques of NATO actions.

Feher's essay is well argued and carefully thought-out. However, it is unsatisfying in several respects. First, as a research tool, the essay is of limited value. Feher rarely supports his arguments with examples, and when he does, the examples are overly general. His footnotes are frustratingly sparse. Second, the essay insinuates that the doctrine of the international community was a deliberate effort to try to make sense of an international order bereft of its Cold War categories. Although he admits that the doctrine evolved out of "a mix of trials and errors, hasty decisions, and hindsight rationalizations" (p. 42), Feher presents the doctrine as if Western governments had actually spelled it out in advance, and then made policy decisions according to its dictates. His argument would have been more convincing had he admitted that the weakness of responses to Rwanda and Bosnia were rooted more in ideological confusion and isolationism than a purposeful doctrine. Finally, Feher opens his essay with a tantalizing chapter called "A Puzzling Chiasma," in which he describes how Western governments and their critics made opposing arguments with regards to Bosnia in 1995, but both reversed themselves with regards to Kosovo in 1999. While the rest of the essay does an excellent job illustrating why Western governments—the international community—made the arguments it did, the essay only revisits the critics of Western policy in a cursory way at the very end.

Ultimately Feher's essay is a good read. It provides a good attempt to make sense of the epistemological confusion in the international world left by the Cold War.

### War Crimes and Humanitarian Intervention

*Genocide in International Law.* By William A. Schabas. Cambridge: Cambridge University Press, 2000. Pp. xvi, 624. Price: \$59.95 (Paperback). Reviewed by Jenia A. Iontcheva.

In 1948 the United Nations General Assembly adopted the Convention on the Prevention and Punishment of the Crime of Genocide. While the Convention was a foundational document for the human rights revolution in international law, during the Cold War its value remained largely symbolic. It was only with the fall of the Iron Curtain that the Genocide Convention was again seen as a document capable of providing the firm textual foundation needed for a nascent practice of international criminal law. As atrocities in Rwanda, Yugoslavia, and Sierra Leone and the rise of neo-Nazism and Holocaust denials stirred global debates about the meaning, prevention and punishment of genocide, legal scholars and practitioners turned to the Convention's text for insight and guidance.

In his most recent work, William Schabas responds to these events by offering a thorough and methodical analysis of the development of the law on genocide. Schabas's close scrutiny of the extensive drafting records of the

Genocide Convention is certain to delight judges and commentators who rely on history as an aid to construing legal texts. The author's greatest contribution, however, is his dynamic interpretation of the historical narrative in view of contemporary legal developments and debates. The most up-to-date treatise on the subject of genocide, Schabas's work is bound to influence judicial opinions and academic research on international criminal law, and it may even inspire further codification initiatives.

The first two chapters of *Genocide in International Law* are devoted to the origins of the legal prohibition of genocide and to the drafting history of the Convention. Aiming to provide an historical context for these legal developments, the author sifts through international law expert reports and through the lengthy debates surrounding the preparation of the Convention and develops an impressive record of primary sources that will be of great service to practitioners and scholars.

Chapter 3 is perhaps the most provocative chapter, as in it Schabas addresses the Convention's hotly debated definition of protected groups. Contrary to most scholars, the author opposes any broadening of the definition to include political groups or social groups defined on the basis of sexuality, gender, or mental and physical ability. He maintains that such an extension would be inconsistent with the drafters' intent and would trivialize the concept of genocide, the symbolic significance of which is intimately tied to the condemnation of the ethnic and racial hatred that fueled the Holocaust (pp. 114, 133).

Chapters 4 and 5 discuss the basic elements of the offense of genocide—the physical act and the mental state of the offender. As Schabas notes, the contours of these elements have proven to be controversial. For example, assaults on a group's culture, language, and religious and cultural institutions, while a common element of both the Holocaust and subsequent persecutions, have not been criminalized. Schabas's response to this omission, however, is different from his response to the exclusion of political groups. He recognizes that both exclusions were a political compromise designed to ensure ratification, yet he regrets the exclusion of cultural genocide, while supporting the narrow definition of protected groups. This different treatment is related to two considerations that inform Schabas's arguments throughout the book. First, the original definition of genocide, conceived in direct response to the Holocaust, includes cultural genocide, but not the destruction of political or social groups (p. 113). Second, other international law principles—in particular those that deal with crimes against humanity—now adequately protect political groups from severe persecutions (p. 150), but not from cultural assaults (p. 547). Even if these distinctions are consistent with an originalist understanding of genocide, most modern interpreters, while supporting an extension of punishable acts to cover cultural genocide, would likely contest Schabas's claim that political persecutions such as the massacres committed by the Khmer Rouge in Cambodia could not be classified as genocide.

The requirement of specific intent imposed by the Convention has also stirred controversy. Schabas argues that the specific intent element is an

essential characteristic of genocide and should not be tampered with—as some commentators have suggested—to create forms of “negligent” genocide. On the other hand, he welcomes a variation on the concept of superior responsibility for genocide (an evidentiary presumption by which a commander is deemed to have participated in genocide if his subordinates committed the crime) (p. 313), despite the fact that it is not fully consistent with the specific intent requirement (p. 305).

In Chapters 5 and 6, the author discusses “other acts” of genocide, focusing on preparatory acts, such as incitement and hate propaganda, and on complicity, which is closely related to the concept of command responsibility discussed above. Schabas argues that it would be desirable to extend the prohibition on preparatory acts in order to enhance the Convention’s preventive function (p. 257). Indeed, he devotes the entirety of Chapter 10 to the duty to prevent genocide and on the implications that such a duty may have for interpretations of preparatory acts of genocide and for the law of humanitarian intervention.

The duty to prevent genocide is one of the larger questions of interpretation of the Convention to which Schabas turns in the later chapters. These questions include the Convention’s jurisdictional and extradition requirements, the responsibilities it imposes on states, and the relationship between its provisions and treaty law. In particular, the author laments the absence from the Convention of universal jurisdiction and of a clear duty to extradite.

In conclusion, Schabas acknowledges that the Genocide Convention’s “balance sheet is inadequate” and that many of its provisions are unclear or outdated (p. 549). He proposes the creation of a reporting mechanism to establish state practice that would aid interpretation of the Convention’s provisions. Schabas also makes a more far-reaching proposal, arguing for a dramatic shift in interpreting the Convention’s essential purpose. He urges that, rather than focusing on prosecution and enlarging the scope of the definition of genocide, international lawyers should focus on extending the scope of the obligations of State parties that flow from prevention. Pointing to an example from recent history, the author notes that such obligations would have required the international community to intervene in order to prevent the genocide in Rwanda. Staking a provocative position after a thorough and meticulous discussion of the Convention’s history and provisions, *Genocide in International Law* is certain to stir debate and to make a lasting contribution to international law scholarship.

*The Kosovo Tragedy: The Human Rights Dimensions*. Edited by Ken Booth. London: Frank Cass Publishers, 2001. Pp. xii, 386. Price: \$24.50 (Paperback). Reviewed by Willow D. Crystal.

The essays assembled by Ken Booth in *The Kosovo Tragedy: The Human Rights Dimensions* attempt to parse the events and choices leading up to the Kosovo crisis of 1999, and to identify the consequences, both local and