

Table of Contents

<i>Foreword</i>	vii
<i>Acknowledgements</i>	ix
<i>Table of Contents</i>	xi
<i>Notes on Citations and Related References</i>	xv
<i>Table of Cases</i>	xvii
<i>Table of Legislation</i>	xxi
<i>Table of Selected International Materials</i>	xxiii
<i>Table of Common Abbreviations</i>	xxv
Introduction	1
Chapter One—Defining a Crime Without a Name	6
A. Genocide as a legal concept	7
B. The Genocide Convention	11
Chapter Two—Conduct Elements	14
A. The prohibited acts	17
Killing members of the group	17
Causing serious bodily or mental harm	17
Imposing destructive conditions of life	18
Preventing births within the group	19
Transferring the children of the group	20
B. The protected groups	21
Racial groups	22
Ethnic groups	23
Religious groups	23
National groups	24
Overlapping groups	25
C. Determining group membership	26
The objective approach	27
The subjective approach	28
Evaluating the subjective and objective approaches	29
Chapter Three—Fault Elements	33
A. ‘Special intent’ and the Genocide Convention	36
B. <i>Mens rea</i> and human groups	39
Discriminatory targeting of group members	39
Destroying groups ‘as such’	40

The quantitative approach	41
The qualitative approach	44
Chapter Four—Human Groups and Genocide	47
A. Understanding human groups	47
Why human groups matter ‘as such’	48
Legal conceptions of groups	50
B. Responding to the limitations of the Convention	51
‘Stability and permanence’	52
‘Auto-genocide’	54
‘Creative’ interpretations	56
Redefining the existing terminology	56
Broadening the victim groups	57
C. Departing from the Convention	59
All ‘arbitrary’ groups	60
Criteria justifying inclusion in groups	62
Historical justifications and pragmatic needs	62
Involuntary groupings	63
Reconstitution after attack	65
Institutional existence and legal personality	67
The common denominator: a rights-based approach	69
Applying the common denominator to political groups	74
D. Political groups and political genocide	76
The rights at issue	76
The analogy of politics to other groups	81
Intersections with protected groups	83
Pragmatic needs	85
E. Political genocide	85
Defining political groups	86
Defining political genocide	88
Chapter Five—Political Genocide and Customary International Law	91
A. Customary international law and international crimes	91
Evidentiary sources	95
Treaties and related materials	96
Domestic law	97
B. State practice on genocide and political genocide	98
Historic records on the Genocide Convention	98
General Assembly Resolution 96(I)	98
The drafting of the Convention	103
Domestic legislation on genocide	112
Domestic case law	113

Bangladesh-India-Pakistan	114
Cambodia	115
Equatorial Guinea	116
Romania	117
Estonia	118
Ethiopia	119
The IACHR (<i>Diaz v Columbia</i>)	120
Spain (Pinochet)	121
Ratification of the Genocide Convention	122
C. Synthesis and conclusions	124
State practice	124
State practice on the Genocide Convention	125
State practice on political genocide	127
<i>Opinio juris</i>	128
D. Political genocide and the principles of legality	129
Chapter Six—The Role of Other International Crimes	135
A. Introduction	135
B. Crimes against humanity	135
Historical antecedents	135
Germany and World War I	136
The Ottoman Empire and the Armenians	138
The Nuremberg Trials	140
Crimes against humanity: the modern understanding	145
The attack	146
The civilian population	148
Widespread or systematic	150
Prohibited acts	151
The <i>mens rea</i> of crimes against humanity	153
C. Persecution	155
<i>Actus reus</i> of persecution	156
<i>Mens rea</i> of persecution	159
D. Comparative analysis	160
Cumulative offences	161
Distinguishing genocide and crimes against humanity	163
Materially distinct elements	165
Further theories on cumulation	169
Fair labelling	171
Wrongfulness and culpability	174
The victims: individuals versus groups	175
The absence of an international crime	177
The relative seriousness of crimes	178

Chapter Seven—The Case for a Crime of Political Genocide	182	
A. Political groups and international criminal law	182	
B. Characteristics of international crimes	184	
Threats to international peace and security	188	
Shocking the international conscience	190	
C. The goals of international criminal justice	192	
Deterrence and retribution	192	
Expression and restoration	194	
D. Responding to political genocide	197	
ICJ proceedings	197	
Human rights adjudication	199	
The need for criminal prosecution	200	
State failures	202	
Discretion and judgment in application	203	
Chapter Eight—The Way Forward: Rethinking the Crime of Crimes	205	
A. The protection of political groups	205	
B. Pragmatic considerations	207	
Ongoing progress on the Genocide Convention and ICC Statute	207	
Asymmetry in application	211	
Law enforcement and military activity	213	
Diluting the concept	216	
Concluding Thoughts	219	
<i>Bibliography</i>	223	
<i>Appendix A</i>	267	
<i>Table I</i>	<i>Data Tables—State Practice on Genocide</i> <i>84-State Survey—Groups Covered by Domestic</i> <i>Legislation Implementing Either the Genocide</i> <i>Convention or the ICC Statute</i>	268
<i>Table II</i>	<i>20 States Covering Political Groups in Domestic</i> <i>Laws on Genocide</i>	272
<i>Table III</i>	<i>51 States not Party to the Genocide Convention</i>	273
<i>Table IV</i>	<i>141 States Party to the Genocide Convention</i>	275
<i>Table V</i>	<i>64 States Party to the Genocide Convention</i> <i>(Domestic Legislation Unavailable)</i>	278
<i>Appendix B</i>	<i>Unofficial Translations of Domestic Laws on</i> <i>Genocide from 84 States</i>	280
<i>Index</i>		325