

Klaus Bachmann*

HOW TO AVOID THE GENOCIDE TRAP

Genocide as a concept in historiography and social sciences

ABSTRACT

This article argues that instead of using inconsistent and often tautological ad hoc definitions from social sciences and the humanities, the legal notion of genocide as it emerges from the Genocide Convention and the jurisprudence of international criminal tribunals should also be applied to historical atrocities. This helps to prevent the inflationary use of the term 'genocide', whose inevitable consequence is that this term is voided of any meaning. Using instead the legal concept makes it possible to disentangle genocidal from non-genocidal violence and to prevent this notion from becoming obsolete. Three examples from German colonial history in Africa illustrate the need for such an approach.

KEYWORDS:

genocide, war crimes, German, Africa, Schutztruppen, colonial, international criminal tribunals

KLAUS BACHMANN

Professor of social sciences at SWPS University of Social Sciences and Humanities in Warsaw, Poland. His research focuses on international criminal justice, International Criminal Law and German colonialism.

<https://orcid.org/0000-0003-0946-8198>

* Research for this article was sponsored by the National Science Centre, Poland (NCN grant no. 485447 2020/37/B/HS3/00643 [Transnationalism and Colonialism. Settler communities in Southern Africa between NS-ideology and apartheid]).

In 1945, the Allied Powers elaborated the concept of ‘crimes against humanity’ to penalize crimes committed by Nazi Germany against its own citizens (which until then had not been codified as crimes under international law but were left to the domestic judiciary of each country wishing to prosecute them). Some authors¹ regard genocide as a special case of a crime against humanity, therefore they can argue in favour of retrospectively applying it to events that occurred even before The Convention came into force; however, this does not enable us to apply it to contexts from before 1945, i.e., before it was adjudicated at the Nuremberg and the Tokyo Tribunals.

Nevertheless, applying the genocide concept,² as codified in 1948, to earlier contexts is still very popular in popular science books, journalistic reports, op-eds, comments and historical accounts. It is especially popular among victims’ communities, because the genocide label is more likely to trigger recognition, empathy and even material benefits (compensation) for victims than any other crime. Today, a trip to Bosnia and a glimpse into bookshops in Sarajevo reveals how many authors in Bosnia regard not only the Srebrenica massacre of 1995 as a genocide but also each and every other violent crime that took place in Eastern and Central Bosnia during the breakdown of Yugoslavia. There, all the crimes adjudicated by the International Criminal Tribunal for the former Yugoslavia (ICTY) that were committed against the Bosniak population, which the ICTY classified as crimes against humanity or war crimes, are presented as examples of a general Serb genocide against Bosniaks.³

The same can also be observed in Serbia, where victims’ organisations and media workers claim that the Croatian operations ‘Flash’ and ‘Storm’, which drove Serb insurgents and the civilian Serb population out of the Croatian-Bosnian borderland in 1995, were also genocide. There is

¹ There is considerable controversy about the legal concept of genocide, with some authors supporting the view that genocide and crimes against humanity are the same crime (with the only difference that crimes against humanity include more victim groups than genocide, i.e., political groups), while others regard both crimes as entirely distinct from each other. See, for the first opinion: Alexander R.J. Murray, ‘Does International Criminal Law Still Require a ‘Crime of Crimes’? a Comparative Review of Genocide and Crimes Against Humanity’, *Goettingen Journal of International Law*, 3.2 (2011), 589–615. For the second: David L. Nersessian, ‘Comparative Approaches to Punishing Hate: The Intersection of Genocide and Crimes Against Humanity’, *Stanford Journal of International Law*, 43 (2007), 221–64.

² For the details of the concept of genocide in International Criminal Law see: William Schabas, *Genocide in International Law. The Crime of Crimes*, 2nd edn (London: Cambridge University Press, 2009).

³ There are also English-language publications extending the genocide claim to all of Bosnia. See: Eric Markusen, ‘Case Study 9: Genocide in Bosnia’, in *Teaching About Genocide. Issues, Approaches and Resources*, ed. by Samuel Totten (Fayetteville: IAP Publishing, 2004), pp. 193–202; Edina Becirevic, *Genocide on the Drina River* (London: Yale University Press, 2014), pp. 81–143. For the discussion about the ICTY’s impact on social attitudes about the war and, more specifically, the Srebrenica massacre, see: Marko Milanović, ‘The Impact of the ICTY on the Former Yugoslavia: An Anticipatory Postmortem’, *American Journal of International Law*, 110.2 (2016), 233–59; Klaus Bachmann, ‘The Loathed Tribunal. Public Opinion in Serbia Toward the International Criminal Tribunal for the Former Yugoslavia’, in *The Legacy of Crimes and Crises. Transitional Justice, Domestic Change and the Role of the International Community*, ed. by Klaus Bachmann and Dorota Heidrich (Frankfurt: Peter Lang, 2016), pp. 113–34.

some judicial sense in applying the genocide notion to these events because the atrocities committed could fulfil the criteria of genocide in legal terms, and the International Criminal Tribunal of the former Yugoslavia had jurisdiction over the respective crimes. From a purely legal perspective, one cannot ignore the reluctance of the ICTY to apply the genocide concept to atrocities committed in Bosnia rather than in Srebrenica. The ICTY never made genocide findings regarding crimes outside Bosnia, and it treated the atrocities committed during the Croatian attack on the Serb settlements bordering Bosnia in 1995 as war crimes and crimes against humanity. German courts have made wider genocide findings which were not overturned by subsequent verdicts of the European Court of Human Rights.⁴

When the United Nations Security Council (UNSC) established the International Criminal Tribunal for Rwanda (ICTR), it limited its timely jurisdiction to the events that took place in 1994 in Rwanda and neighbouring countries. Based on the respective UNSC resolutions, the ICTR never investigated atrocities committed before 1994; hence, the massacres against the Bagogwe (a Tutsi sub-group in the rural countryside of Rwanda's north) were never recognized as genocide because they occurred before 1994. Post-genocide Rwanda acted differently, extending the timely scope of its genocide legislation to the period between October 1990 and August 1994. Therefore, Rwandan courts can also adjudicate genocide regarding atrocities which are outside the ICTR's timely jurisprudence.⁵

Courts tend to apply the same judicial concept differently to various real-world situations, and public opinion regards actions as genocide that may not strictly legally be genocide. However, in all these cases, binding rulings about what is and is not genocide are possible because the underlying legal concepts exist and there are courts and tribunals that can adjudicate them.

Yet, there is much less sense in doing the same regarding the massacre of Armenians in the late Ottoman Empire, the German *Kaiserreich's* colonial policy in German Southwest-Africa, or the expansion of European settlers to the West in North America. Back then, there was no concept of genocide, and in many cases it is even possible to show a lack of colonial actors' understanding of the moral background of the concept of genocide. In other words: they neither understood nor shared our conviction concerning the moral recklessness of extinguishing entire ethnic, national,

⁴ Marko Attila Hoare, 'A Case Study in Underachievement: The International Courts and Genocide in Bosnia-Herzegovina', *Genocide Studies and Prevention*, 6.1 (2011), 81–97.

⁵ Christian Garuka, 'Genocide Prevention and the Punishment of Genocide Ideology in Rwanda', in *Criminalizing History. Legal Restrictions on Statement and Interpretations of the Past in Germany, Poland, Rwanda, Turkey and Ukraine*, ed. by Klaus Bachmann and Christian Garuka (Berlin: Peter Lang, 2020), pp. 89–106.

racial or religious groups; nor did they recognize the moral requirement to protect civilians, the wounded, or surrendering enemies.

This does not prevent lawmakers from enacting laws and resolutions which declare certain past atrocities as genocide. The French and the German parliaments did this regarding the massacres of Armenians in the late Ottoman Empire; German ministers also did so regarding the German Empire's war against the Nama and the Herero in what was then German Southwest-Africa; and the Polish parliament did so concerning the massacres of the Polish civilian population in Volhynia (now Ukraine) in 1943–44. There are many other examples of such political rather than legal declarations.⁶ In some cases, these declarations were preceded by legal analysis; in others, they were mere political declarations which only testified to their authors' outrage about the underlying atrocities (and eventually the perpetrators' refusal to admit they were genocide).

Against this background, applying the legal concept of genocide to such a distant context becomes either a purely intellectual endeavour or forms part of victims' groups' competition for acknowledgement, recognition and compensation, or, in other words, for better access to resources which would otherwise be unavailable. One may regard such attempts as justified or not, but they are hardly helpful when trying to derive a precise notion of genocide for the purposes of historiography or social sciences. The inflationary use of this label tends to deprive it of any precise meaning. By invoking genocide for each large atrocity, victims' groups – willingly or not – contribute to the trivialization of this concept in popular culture and politics. If everything is genocide, then nothing is genocide: the concept then loses any distinct meaning and no longer enables us to distinguish between genocidal and non-genocidal actions.

But the popular use of the genocide label is not only inflationary: it is also often ill-informed in presupposing a legal hierarchy of crimes, according to which genocide is something like the crime of all crimes or the worst of all possible atrocities. This is the often unreflected but always underlying supposition of those who invoke the genocide label in the contest for awareness, resources and recognition: they want to be regarded as survivors of a genocide rather than of any other crime because they regard genocide as the worst crime of all. However, the genocide concept itself does not support such an interpretation. Many war crimes and crimes against humanity caused more victims than many (judicially

⁶ See, for example: Nikolay Kopolov, *Memory Laws, Memory Wars: The Politics of the Past in Europe and Russia* (Cambridge University Press, 2017). Most of these declarations do not involve criminal sanctions for denial and hence are only declarative; others rely on criminal sanctions. For the latter: Klaus Bachmann et al., 'The Puzzle of Punitive Memory Laws: New Insights into the Origins and Scope of Punitive Memory Laws', *East European Politics and Societies*, 4 (2020), 996–1012.

recognized) genocides: their perpetrators used more (and more atrocious) violence, and their actions had longer and harsher consequences for the targeted communities. While this article was being written, the wars in Syria and Yemen were ravaging these countries, causing the death of many more victims (including non-combatants, civilians and even children) than the massacre of Srebrenica, which, according to the most recent forensic investigations, cost the lives of about 8,000 Bosniaks. Nevertheless, no international body has so far accused the Syrian or Yemenite governments, rebel groups or third parties of committing genocide in Syria or Yemen.⁷ Some of the crimes committed during the genocide in Rwanda in 1994 were adjudicated as crimes against humanity (for example, cases in which Hutu activists killed other Hutu civilians) or war crimes (crimes committed during the clashes between government forces and Tutsi rebels). Does this make them more atrocious than massacres which were adjudicated as acts of genocide? Under today's International Criminal Law – as it has emerged from international conventions, humanitarian law and the jurisprudence and doctrine of international tribunals – one can commit a war crime, a crime against humanity or genocide without killing a single person. At the same time, a large-scale massacre of civilians can be a war crime, a crime against humanity, or an act of genocide. It all depends on the circumstances and, first and foremost, on the intention of the perpetrators.

IS THERE A NON-LEGAL CONCEPT OF GENOCIDE?

These are not the only problems which occur when the legal concept of genocide is invoked without the necessary legal rigor and precision. Neither history, social sciences nor anthropology have so far created a concise, coherent and consensual definition of genocide which could be used to settle the controversies about which mass crimes fulfil the genocide criteria and which do not. In many cases, historians and social scientists (not to speak of journalists) adopt their own deliberate notions of genocide which they compare against publicly known facts about mass atrocities.⁸ These definitions are usually tailored in such a way that makes a genocide finding inevitable, thus creating circular conclusions: the analysed crime must be regarded as

⁷ Recently, a German court sentenced a couple to long prison sentences for murder as a count of genocide (against the Yazidis, an ethnic minority in Iraq). Both had joined the Islamic State movement as fighters, had held Yazidis as slaves and killed a child from that group. The court did not adjudicate genocide against the Yazidis as such but concluded that both were culpable of genocide because they had committed murder and slavery in the framework of a genocide. 'German Court Finds Former 'IS' Member Guilty of Genocide', *Deutsche Welle*, 30.11.2021 <<https://www.dw.com/en/german-court-finds-former-is-member-guilty-of-genocide/a-59976226>> [accessed 30 November 2021].

⁸ See, for example, the various concepts of genocide in Adam Jones, *Genocide. A Comprehensive Introduction* (London: Routledge, 2006).

a genocide because the underlying definition was designed with the sole aim of making it one.⁹ For some authors, the decisive element of genocide is the perpetrators' intent to annihilate another group and whether this intent could actually be achieved. Taking this approach, genocide occurs when one group manages to extinguish another group, but genocide does not occur if the victimised group survives the onslaught.¹⁰ For other authors, genocide is every massacre which targets a lot of people, no matter what the perpetrator intended to achieve by slaughtering others. If such a massacre appears (according to historical evidence) smaller than 'we used to think', then it is no longer regarded as genocide by these authors. In these cases, these authors usually fail to indicate a clear minimum number or percentage of casualties which must be regarded as genocide.¹¹ Since there is no generally accepted definition of genocide in social sciences and the humanities, and since the different ad-hoc concepts created by every author in order to prove or disprove that a specific atrocity was genocide are likely to very quickly become tautological, it seems necessary to transpose the legal definition of genocide into these disciplines.

Applying the ICL definition of genocide not only facilitates the distinction between different kinds of mass atrocities, it also helps to disentangle genocidal actions from non-genocidal ones within the same course of events.¹² This definition is likely to shed new light on well-known and thoroughly researched events, some of which will no longer appear to be genocide, while others may unexpectedly appear to be so. Several cases will be presented in the following subchapters. They were chosen in order to demonstrate the consequences of applying the legal notion of genocide to (historical) real-world cases in historiography and how this differs from the use of arbitrary and often tautological ad hoc notions of genocide. These cases are:

⁹ In many cases – which are outside of this article's scope – social scientists invoke genocide concepts in order to explain an escalation of violence or the actions of various actors involved in large massacres. The legal concept does not enable us to understand why and how genocide occurred; it only provides a precise definition which makes it possible to distinguish genocide from non-genocidal mass violence without resorting to circular conclusions.

¹⁰ See, for example, Vahakn Dadrian's definition as reported by Jones, *Genocide*, pp. 15–16. Jones provides a whole number of definitions, some of which would make German colonial policy genocidal, while others would not.

¹¹ Claus Nordbruch, *Völkermord an den Herero in Deutsch-Südwestafrika? Widerlegung einer Lüge* (Tübingen: Grabert Verlag, 2004); Gert Sudholt, *Die deutsche Eingeborenenpolitik in Südwestafrika. Von den Anfängen bis 1904* (Hildesheim: Georg Olms Verlag, 1975); Brigitte Lau, 'Uncertain Certainties. The Herero-German War of 1904', in *History and Historiography. Four Essays in Reprint*, ed. by Brigitte Lau (Windhoek: National Archives of Namibia, 1995); Rainer Tröndle, *Ungewisse Ungewissheiten. Überlegungen zum Krieg der Herero gegen die Deutschen, insbesondere zu den Ereignissen am Waterberg und danach* (Windhoek: Namibia Wissenschaftliche Gesellschaft, 2012), pp. 7–25.

¹² For the most recent update on the legal genocide definition, see Schabas, *Genocide*; regarding its use in historical research, see Klaus Bachmann, 'Germany's Colonial Policy in German South-West Africa in the Light of International Criminal Law', *Journal of Southern African Studies*, 43.2 (2017), 331–47.

- the German war against the Herero and the Nama, which is widely regarded as the first genocide of the twentieth century; however, if the actual ICL definition of genocide is applied, this war appears in a light which is very different from most historical and popular science accounts of these events;
- the German war against the Maji-Maji uprising in German East Africa, which is usually not regarded as genocidal even though it led to many more victims than the events in German Southwest Africa;
- The fate of the Bushmen under German colonial rule, which some authors regard as genocide, mainly because they ignore the legal meaning of the notion and neglect the intention of the perpetrators.

GENOCIDE IN GERMAN SOUTHWEST AFRICA?

Between 1904 and 1907, German troops carried out a military campaign to first quash the uprising of most (but not all) of the Herero and then also the Nama clans in the German colony. The Herero war had several phases. During the first, the Germans lost most battles because the Herero knew the landscape better, avoided open battles, and stayed out of the reach of the modern German weapons (mostly canons and machine guns). Then, the German cabinet replaced the colony's governor with a new commander and the colony was put under a military regime; a state of war was declared and the German troops surrounded the Herero, who had gathered in the Waterberg area to prepare for negotiations. The new commander in chief, Lothar von Trotha, rejected the idea of negotiations and, as he told his superiors in Berlin (who approved the plan), he planned to encircle the Herero and deliver a 'battle of extermination' to extinguish them 'as a nation' (and not only as a military threat).¹³ This was clearly genocidal and testifies to the German leadership's 'genocidal intent'; thus, under current ICL, every war crime committed in the course of this campaign would count as genocide.¹⁴ However, the genocide von

¹³ Von Trotha an den Chef des Generalstaabs der Armee, Berlin-Lichterfelde, Bundesarchiv (hereafter BArch), R 1001/2089. The original wording of the letter (which is also slightly ambiguous in German) is the following: 'Es fragte sich nun für mich nur, wie ist der Krieg mit den Herero zu beenden. Die Ansichten darüber, bei dem Gouverneur und einigen 'alten Afrikanern' einerseits und mir andererseits gehen gänzlich auseinander. Erstere wollten schon lange verhandeln und bezeichnen die Nation der Herero als notwendiges Arbeitsmaterial für die zukünftige Verwendung des Landes. Ich bin gänzlich anderer Ansicht. Ich glaube, daß die Nation als solche vernichtet werden muß, oder, wenn dies durch taktische Schläge nicht möglich war, operativ und durch die weitere Detail-Behandlung aus dem Land gewiesen werden wird'. The document does not bear any date, but it mentions that the notorious 'extermination order' had been issued a few days before.

¹⁴ The nexus between war crimes and genocide only exists if the (very controversial) notion of a 'Joint Criminal Enterprise' is applied. It was developed by the International Criminal Tribunal for the former Yugoslavia and also applied by the International Criminal Tribunal for Rwanda. The International Criminal Court rejected it. See: Klaus Bachmann and Aleksandar Fatić, *The UN International Criminal Tribunals. Transition without Justice?* (London: Routledge, 2014), pp. 199–231.

Trotha wanted to commit did not take place because the Herero fled into the desert, where many of them perished, whereas others managed to get asylum on the British territory in what today is Botswana and the Western Cape. In other words, von Trotha had a genocidal plan but failed to implement it. Chasing the Herero into the desert, however, was neither genocide nor even a war crime. What was illegal (under current ICL and the humanitarian provisions of von Trotha's time) was the lack of distinction between combatants on the one hand (killing whom was and is legal in war), and wounded fighters, people surrendering, and civilians (whom humanitarian law already then required the German army to treat 'humanely') on the other hand. Frustrated by his inability to deliver the 'battle of annihilation' he had promised his superiors in Berlin, von Trotha issued an order which required his soldiers to shoot at every Herero (no matter whether armed or not, no matter whether wounded or not) and to chase away civilians from water holes. His order that 'no quarter be given' was already a war crime under the humanitarian law of the day. However, he never managed to implement his order in full because his soldiers did not get hold of the Herero. There are strong indications that his order was a means to convince his superiors in Berlin of his resolve and determination and to obfuscate his failure to surround and exterminate the Herero. Von Trotha's leading officers knew that the order had been issued in order to convince Berlin rather than to be carried out in practice. Before the army managed to act according to this 'extermination order', the government in Berlin forced him to rescind it and to allow the Herero to surrender without being shot. Next, the army had to build camps to accommodate the surrendering Herero and their families, but it proved unable to create conditions in these camps that would actually guarantee the inmates' survival. After 1907, when the hostilities had ended and the Emperor lifted the state of war from the colony, the army had to set free the surviving camp inmates. However, because of the fear of the German settlers, who were wary about another uprising, the administration decided to deport the Herero and Nama leaders with their families to other German colonies in Africa, where more or less half of them perished due to disease and starvation. These actions caused far fewer casualties than the open hostilities in 1904 and 1905, but it was them – not the Waterberg battle, the desert campaign and the 'extermination order' – which were genocidal. Conditions in the camps were such as to make the survival of the group unlikely, and the removal of the group leaders to other colonies constituted a count of deportation under the Genocide Convention. Because conditions in these other colonies were detrimental to the survival of the prisoners (and the German authorities were reluctant to improve

them or sent the prisoners back to German Southwest Africa), they also fulfilled the criterion of 'creating conditions calculated to bring about the destruction of the group'.¹⁵

The crucial argument supporting the genocide claim with respect to Germany's policy towards the Herero and the Nama usually consists in the death toll among both groups that was caused by the war and the subsequent persecutions. Estimations are difficult because the initial number of Herero and Nama remains unknown, and the number of those who survived the war, the camps, and the deportations is disputed. Approximations range from 60,000 to 100,000 casualties, which means that from 50 per cent to over 80 per cent of the pre-war Herero population perished.

But in the light of the current ICL genocide doctrine, a high number of casualties is not necessary to establish whether a genocide took place. What is of utmost importance is the intention of the perpetrators and whether this intention was carried out in some way, regardless of its success. In the light of modern ICL, it is enough to prove the existence of a JCE (Joint Criminal Enterprise) among various German players (in Berlin, Cameroon, and German South-West Africa) whose common plan was to remove the Herero and the Nama as they were an obstacle to German policy. Some of these (among them von Trotha) had such an intent, and it was apparent to the others that genocide would be a possible consequence of implementing such a plan. Various institutions contributed to the committing of this crime: some by actively engaging in the persecution of the Nama and the Herero; others by not taking crucial measures that would have prevented the Herero and the Nama from perishing in camps and during deportation. Even if one rejects the JCE concept and instead applies the concept of command or superior responsibility, the government of the *Kaiserreich* is still criminally liable for the genocide carried out in German South West Africa. Genocide took place in German South West Africa, but it happened after the Nama and the Herero uprisings had been quelled by the *Schutztruppe*. During the Waterberg battle and the sealing off of Omaheke, von Trotha revealed his genocidal intent, but he did not execute it because he lacked the means to do so. This changed after

¹⁵ It must be mentioned here that modern ICL sees the destruction of a group as more than just the destruction of some or all its members. Theoretically, it is now possible to commit genocide in the terms of the above-mentioned count by creating conditions in which no single group member must die and the group will vanish because of (for example) clandestinely applied methods of birth control or because the internal hierarchy of the group is destroyed. In such a case, all group members remain alive and healthy, but the group ceases to exist and becomes a mere sample of individuals which no longer belong to their former group. This is what the deportations in German Southwest Africa were meant to achieve: to destroy the groups as polities and to harm their internal hierarchies and decision-making processes so that the Herero and the Nama would no longer be able to act as groups or polities. This development of this doctrine is logical if one assumes the objective of The Convention is not only to protect a group as the entirety of all group members, but, as an amendment to the ICC Statute recently puts it, 'the group as such', because the existence of various ethnic, racial, national and religious groups is a value which The Convention intends to uphold.

the Herero and the Nama had surrendered. Now the German authorities could carry out the genocidal intent, as transpires in the correspondence between von Trotha and the General Staff of the Army in Berlin. And so they did – instead of applying the regulations from Humanitarian Law, which required them to regard the Nama and the Herero as POWs and to treat them humanely.

GENOCIDE IN GERMAN EAST AFRICA?

Compared to German South West Africa, the situation in German East Africa was different in almost every aspect. The territory was much bigger (German East Africa was twice the size of the German Empire before World War II), and far fewer Germans had settled there due to the inhospitable climate and health conditions. Most of them either had plantations or were working as traders or administrative staff. The plantations were mostly in the northern part of the country, but there was never anything like the settler community in German South West Africa, and the only towns with a dense white population were coastal ones. German East Africa was also more diverse in social, religious and ethnic terms. It had been penetrated by Arab trader caravans, which had spread Islam among the local population and set up chieftaincies, but Indian traders were also present. A multitude of tribal organisations permeated the country, thus creating a difficult equilibrium of local power structures and hierarchies in which the Germans were only one of many factors of authority. The German authorities relied on indirect rule, which ranged from constant pressure and military presence in some regions to an almost complete absence in others.¹⁶

Extreme violence had already taken place before the turn of the century. During the 1890s, German-led Askari troops, recruited from various other tribes, had outfought the mighty Wahehe kingdom in the central part of the colony. The Wahehe, inspired by Zulu war tactics, had resorted to a kind of partisan warfare, which in turn had triggered a German counterinsurgency. The abolition of humanitarian constraints was not only motivated by the interests of the warring groups but also by the absence of a common moral framework. After the submission of the Wahehe, the German administration introduced the hut tax, and the region became

¹⁶ In Rwanda and Burundi, the German authorities had imposed a ban on white settlers and almost entirely relied on the local Rwandan and Burundian kingdoms, trying to avoid any friction to maintain peace and avoid being dragged into a war in a territory they hardly knew and were unable to penetrate without a disproportionately strong military effort.

a popular destination for missionaries and traders.¹⁷ In the war with the Wahehe, both sides committed atrocities against the civilian population. Mkwakwa, the Wahehe king, even ordered the killing of renegade leaders and the mutilation of their women. In 1897, Tom von Prince, a British-born *Schutztruppen* officer, issued an order which may be seen as the precursor of von Trotha's October order. He put a ransom on Mkwawa's head and declared that no prisoners should be taken. Every Wahehe who was seen with a weapon was to be hanged; prisoners of war were to be killed. Von Prince's wife, who wrote a diary about her experiences in the colony, remarked that 'The Wahaha had wanted their annihilation, they have again launched a murder campaign'.¹⁸ The Governor at the time, Eduard von Liebert, labelled the final phase of the war 'a campaign of annihilation and destruction'.¹⁹

The Maji-Maji uprising was different from previous rebellions and the Herero and the Nama uprisings in German South-West Africa. It was the first inter-ethnic uprising of more than 20 different ethnic groups that united against the German administration. It started as a rebellion against Arab traders and cotton plantations in the coastal town of Samanga. Missionaries were not spared. The war that started was not directed against German rule alone. Many of the groups that fought against the *Schutztruppe* were also fighting against each other, and the *Schutztruppe's* use of Askaris from different ethnic groups only contributed to these antagonisms. Other groups used the mere fact that their former enemies were now fighting each other to increase their power, rid themselves of former constraints, or just rob their neighbours.²⁰ The main target of the initial violence was the cotton plantations, and for good reason. Cotton was foreign to East African agriculture; it yielded relatively high profits, and harvesting it was labour intensive. These features made the plantations the perfect vehicles for producing export surpluses on the one hand, and for spreading a system of forced labour in the country on the other hand.

In the ensuing war, war crimes were the rule rather than the exception. The German Empire committed these crimes even though it had ratified the Red Cross Convention and the Hague Convention on the Customs of War on Land, whose Martens Clause clearly also protected wounded

17 Many Wahehe later supported the German troops in their campaign against the Maji. They came from the Northern part of the colony, where resistance against the Germans was weak, although German settler presence was higher than in the South – another argument against the concept of a 'war of independence', an 'anti-colonial' or 'anti-imperialist' fight, which was promoted later by German Democratic Republic (GDR) historians and Tanzania's independence movement.

18 The original German word is 'Vernichtung'. Magdalene Prince, *Eine deutsche Frau im Innern Deutsch-Ostafrikas* (Salzwasser Verlag, 2012), p. 93, quoted according to Tanja Bührer, *Die Kaiserliche Schutztruppe für Deutsch-Ostafrika. Koloniale Sicherheitspolitik und transkulturelle Kriegsführung 1885–1918* (München: Oldenbourg Verlag, 2011), p. 262.

19 Eduard Liebert, *Neunzig Tage im Zelt. Meine Reise nach Uebehe, Juni–September 1897* (Berlin, 1898), p. 9, quoted according to Bührer, p. 262.

20 Bührer, *Die Kaiserliche Schutztruppe*, pp. 229–32.

and surrendering non-state fighters (like the Maji-Maji combatants and the Herero and the Nama fighters) from arbitrary violence.²¹

In 1905, many Wahehe cooperated with the German troops, despite the bitter fights eight years earlier. Under the orders of *Schutztruppen* officers, they embarked on a scorched-earth policy which included the abduction of women and children in order to prevent them providing assistance to the warriors in the bush, the killing of prisoners of war, the looting of villages, the destruction of crops, and the torture of surrendering enemies to extort intelligence.²² Their commander, Theodor von Hirsch, the former station chief of Mpapua, wrote a diary in which he admitted that he felt 'like a murderer, arsonist and slave trader', but he did nothing to stop the war crimes. He even paid his warriors a cash reward for severed heads.²³ He was not the only one. Fighters on all sides of the conflict tended to kill not only combatants but entire populations of raided villages – destroying food and crops during their marches to weaken support for their enemies. This often left civilians without any means to survive. Reports from the local administration to the Governor did not hide these facts. 'A lot of crops were destroyed by us. Food shortage is not excluded', wrote the head of the Lindi district to the governor, who wondered whether the locals would be able to pay the fee the Governor had imposed on villages that had joined the insurrection: 'Their huts and stocks are destroyed'.²⁴ In a message to Berlin, general Glatzel in Daressalam described the actions of a Navy officer who had 'attacked and destroyed a village'.²⁵ Usually, even after surrendering, insurgents (and especially their local leaders) were executed immediately in short and cursory proceedings which were called 'martial courts'.²⁶

It remains to be established whether the war crimes committed during the Maji-Maji war can be regarded as genocide within the meaning of ICL's genocide definition. As pointed out previously, the commanders' weak influence on their Askari troops does not exonerate them from command responsibility, at least not if they were either able to exercise effective control over their soldiers in the field or were able to punish them afterwards. Punishment of Askaris was frequent and harsh, but it hardly

²¹ At the time of the uprisings, the German Empire had the second Hague Convention about the Laws and Customs of War on Land (in 1900). The Convention on the Amelioration of the Condition of the Wounded on the Field of Battle (the Red Cross Convention of 1864) was formally ratified in 1907 (hence after the uprisings in the German colonies), as was the fourth Hague Convention (ratified in 1909). Nevertheless, the German authorities were aware of the Red Cross Convention being customary law and applied it in practice even before it entered into force in Germany.

²² Bührer, *Die Kaiserliche Schutztruppe*, pp. 265–66.

²³ *Ibid.*, p. 266.

²⁴ Ewerbeck an Gouverneur, n.d., BArch, R 1001/723.

²⁵ Telegramm aus Daressalam, Gen. Glatzel an Admiral Berlin, BArch, R 1001/723, p. 147.

²⁶ Kaiserlicher Bezirksamtman in Lindi an Gouverneur, 15 September 1906, BArch, R 1001/723, pp. 59–62. The report describes the district officer's personal experience from an excursion into territories where the uprising was about to be extinguished.

ever happened as a result of war crimes. Usually, Askaris were punished for lack of loyalty, ignoring orders, or committing errors in battle. But was there a genocidal *mens rea*? Von Hirsch's diary reveals that genocidal considerations were not foreign to *Schutztruppen* commanders. The open question is whether the genocidal intentions from 1897 continued to exist and influence military decisions a few years later in regard to other groups. There are strong indications of genocidal intent in some of the German commanders. In October 1905, Hauptmann von Wangenheim presented the scorched-earth strategy as a means of ending partisan warfare by starvation: 'If the remaining food is consumed and people's homes are destroyed and they lose the possibility to cultivate new fields because we conduct continuous raids, then they will have to give up their resistance.'²⁷ Even some missionaries joined the call to fight the insurgents through starvation.²⁸ Subsequently, the German troops destroyed fields and crops to the extent that they endangered their own food supplies. Von Götzen justified this hunger strategy by pointing to the alleged civilisatory inferiority of the enemy.²⁹ The strategy was a success: the Maji-Maji uprising ended in a three-year-long mass starvation which devastated a large part of the southern part of the country. Young mothers were unable to feed their new-born babies, who perished in large numbers. Southern Usagara was entirely depopulated by 1906; in Ulanga, 25 per cent of the women had become unfit to become pregnant. According to some estimations, one third of the pre-war population had died, with up to 300,000 casualties.³⁰ The ecological consequences of the war triggered an expansion of the tsetse-infected parts of the country because the flies followed game which migrated to the depopulated regions. Thus, the German authorities had 'deliberately inflicted conditions of life calculated to bring about the physical destruction' of other ethnic groups, as the ICL genocide concept requires. But did they do this because of the intent to destroy these groups in whole or in part? Here again, as already demonstrated in the case of the Nama deportees, the fate of these groups' elites is crucial. There is no written evidence of an order that would point to such an intent by at least one of the German commanders or a possible member of a Joint Criminal Enterprise. Even the decision to apply scorched-earth policy in the colony cannot be attributed to one central order; instead, it was rather the

²⁷ Quoted according to Karl-Martin Seeberg, *Der Maji-Maji Krieg gegen die deutsche Kolonialherrschaft. Historische Ursprünge nationaler Identität in Tansania* (Berlin: Dietrich Reimer Verlag, 1989), p. 79, who relies on Gustav Adolf von Götzen, *Deutsch-Ostafrika im Aufstand 1905–1906* (Berlin: Dietrich Reimer, 1909), p. 149.

²⁸ For example, the superintendent of the Berlin Mission, C. Schumann, wrote in an affidavit to the military outpost in Iringa (19 January 1901): 'The enemy refuses to hand himself in. He can only be overwhelmed by hunger'. BArch, R 1001/724, p. 66.

²⁹ Seeberg, *Der Maji-Maji Krieg*, pp. 80–82.

³⁰ Susanne Kuß, *Deutsches Militär auf kolonialen Kriegsschauplätzen. Eskalation von Gewalt zu Beginn des 20. Jahrhunderts* (Berlin: CH. Links Verlag, 2010), pp. 111–12. There were only a few casualties on the German side: 15 white soldiers, 389 African soldiers and 66 porters died.

result of several initiatives by commanders in German East Africa and the result of the escalation of violence.³¹ There is some circumstantial evidence suggesting that the German administration wanted to destroy not only the members of the hostile ethnic groups but also the entire groups themselves by depriving them of their elites and leadership. In November 1905, von Götzen issued an order regulating the duties to be imposed on surrendering insurgent groups and villages. The first condition was the surrender of the local leaders (of the uprising) and those whom the German authorities referred to as ‘the wizards’, i.e., those who spread the Maji-Maji cult.³² The order to the commanders in the field does not specify how these people were to be treated, but from the entirety of the records one may conclude with little doubt that it was expected that they would be executed, which would likely deprive the respective ethnic groups of their traditional leaders. This was not justified as a means of shattering the traditional order but as a punishment for participating in the uprising. Groups which had stayed away from the Maji-Maji were not repressed at all. From the beginning of the Maji-Maji uprising, the traditional leaders of the affected groups were targeted deliberately, and the war led to the extinction of ‘a whole generation, whose members had learned to think in categories which exceeded the horizon of their own tribe’, as Seeberg puts it.³³ ‘The Africans not only lost their traditional groups of rulers, as far as they had participated in the uprising, their very existence was threatened because of the destruction of villages, harvests and stocks’. Because of the German war strategy, some groups also were deported to other parts of the country – a case of ‘forcible transfer’ which would today be punishable either as a war crime (if committed during a war and against belligerents) or as a crime against humanity (if carried out against a civilian population, which was the dominant pattern in German East Africa).³⁴ Economic considerations rather than ideology motivated the punishment. Some authors who reject the genocide claim with respect to East Africa argue that the German authorities had no economic interest in exterminating tribes under their jurisdiction because they needed them as workers. But this is wrong for several reasons: it assumes genocide to be a rational strategy from which a perpetrator can expect material benefits, and it neglects the existence of irrational genocides committed on the basis of ideological motivations (like, for example, racism, communism or extreme nationalism).

³¹ KuIS, *Deutsches Militär*, p. 120.

³² Befehl an die Truppenführer im Aufstandsgebiet, 11.9.1905, BArch, R 1001.724, p. 119 and BArch, R 1001/728, p. 16.

³³ Seeberg, *Der Maji-Maji Krieg*, p. 89.

³⁴ KuIS, *Deutsches Militär*, p. 124.

The case of the Maji-Maji uprising illustrates the paradox behind these popular and widespread understandings of the genocide concept. Quashing the uprising caused many more casualties than von Trotha's campaign in German South West Africa and it clearly had genocidal consequences for the affected population. Large parts of the traditional leadership of the ethnic groups and tribes were destroyed by the German war conduct; however, because it is not (yet) possible to prove the genocidal intent of the perpetrators, the atrocities and mass murders, the scorched-earth policy, and the attempt to quell the uprising through starvation, they must be regarded as war crimes (punishable under Hague II) or – if one wants to apply a modern legal concept – as a crime against humanity in so far as it was directed at the civilian population. But if there is no proof of the existence of a Joint Criminal Enterprise among the German elites and of at least one participant with a genocidal *mens rea*, the mass murder in German East Africa cannot be regarded as genocide.³⁵ The Germans did kill many leaders of the groups which rose against them, but there is no proof they did so to destroy these groups 'in part or in whole'. In many cases they killed leaders to punish them or eradicate them as potential security threats. Therefore, genocidal intent is easier to prove in the case of the Wahehe campaign a few years earlier.

THE CASE OF THE BUSHMEN

The high casualty numbers and the devastation during the quashing of the Maji-Maji uprising are usually presented as the result of a spiral of military escalation which was triggered by partisan warfare and led to war crimes committed by both sides. Some authors interpret the low-intensity repressions of the Bushmen in German South-West Africa, which took place after the wars against the Nama and the Herero, as another genocide. For example, Robert J. Gordon even wrote about several allegedly forgotten 'Bushman genocides', basing his claims mainly on records from the National Archive of Namibia in Windhoek.³⁶

German accounts of colonial violence in Namibia which focus on the more widespread persecutions against the Nama and the Herero people

³⁵ It is possible to invoke the concept of 'culpable acts' as indication of genocidal intent from the judgement in the trial between the prosecutor and Krstić (IT-98-33), but that would exclude the use of the JCE III concept because 'culpable acts' cannot be regarded as elements of a joint plan and the (potential) other participants in the plan cannot not know about them before they take place. For the argument in the Maji-Maji context see: Klaus Bachmann and Gerhard Kemp, 'Was Quashing the Maji-Maji Uprising Genocide? An Evaluation of Germany's Conduct through the Lens of International Criminal Law', *Holocaust and Genocide Studies*, 35.2 (2021), 235–49.

³⁶ Robert J. Gordon, 'Hiding in Full View: The "Forgotten" Bushman Genocides of Namibia', *Genocide Studies and Prevention: An International Journal*, 4.1 (2009), 28–57. See also: Robert J. Gordon, *The Bushmen Myth: The Making of a Namibian Underclass* (Boulder: Westview Press, 1992).

often neglect the Bushmen. Compared to the Herero and the Nama, the San³⁷ were more vulnerable and had much weaker polities. They lived in relatively small groups and made a living from hunting and gathering. They were the object of various stereotypes among other groups, both white and native, who regarded them as unreliable, unpredictable, empowered by magic, but at the same time as very knowledgeable about and adapted to the conditions of the bush. The Herero, the Nama, and the Germans feared them because of their use of poisoned spears and arrows and their ability to move almost undetected in the bush, but they also admired them for their endurance, their supreme knowledge of geography and animal life, and their abilities as pathfinders. Without a central authority comparable to the chieftaincies of the Nama and the Herero, they were unable to respond jointly to dangers, but they also were much more difficult to control and steer. When the German authorities introduced their notorious pass and control regulations, which subordinated the surviving Nama and Herero to German farmers' labour needs, the Bushmen became a disturbing factor in the new system. The Bushmen were subjected to comprehensive control, which criminalized any attempt to pursue a life outside of the German regulations and the German-controlled labour market. Those who refused to carry passes (which restricted their mobility) and work for German settlers were regarded as outlaws. German farmers, wary of a new uprising and full of fear of the remnants of the Herero and the Nama fighters who roamed parts of the country in search for food, animals and weapons, often shot at Bushmen. After the quashing of the Nama and the Herero uprising, the number of *Schutztruppen* soldiers was reduced, but the colony then created a police force which tried to rein in Bushmen who refused to register and work for settlers.

But it was not only the German post-uprising policy that put pressure on the Bushmen. The Grootfontein district, a Bushmen stronghold, saw the development of a strong mining sector after 1908 which attracted many workers from outside – Ovambo recruited from the North and even immigrants from Transvaal and the Cape. At the same time, Nama were resettled from the south to the Grootfontein District. As herders of small cattle, they occupied the same landscape the Bushmen used for hunting, and the mere existence of so many other newcomers reduced the area available to the Bushmen even more. They did what the Nama had done when their polities had been destroyed by the German war effort: they started to raid the environment and make a living from banditry. There are records

³⁷ San is today's ethnic label for the Bushmen.

of Bushmen robbing farmers and traders; there were also cases in which Ovambo mine workers were assaulted and robbed.³⁸

There were two kinds of responses to this 'Bushmen problem'. The first was blind and irrational retaliation by farmers, who often started to shoot at Bushmen as if they were game. There are no indications that Bushmen hunting was more than the sum of individual acts of violence undertaken by farmers. There are no traces pointing to collective action by farmers, and there is no indication of the existence of a plan to exterminate the Bushmen as a group.

The second attempt to solve the 'Bushmen problem' was more bureaucratic and was aimed at deterring Bushmen raids and preventing vicious and indiscriminate attacks against them. It had two main objectives: to limit or eradicate the security threat which some Bushmen posed, and to protect the Bushmen from excessive violence by the farmers and the police. In other words, it was an attempt to establish and strengthen the state's monopoly of violence over the colony with regard to the Bushmen. In 1911, the Government in Windhuk issued a regulation which allowed the police to destroy Bushmen settlements (the so-called 'werften') only if the respective Bushmen had stolen cattle or assaulted workers or farmers.

Contrary to Gordon's claim that 'Bushmen genocides' had taken place in Namibia before World War I, it was the policy of the German authorities to preserve the Bushmen as a group. There is no single document showing genocidal intent from representatives of the German state in the colony; at most, there is some evidence that indicates genocidal thinking by farmers. However, there was no widespread and systematic attack on the Bushmen population that could be construed as a framework which would make individual acts of violence genocidal. Instead, the German administration moderated the farmers' calls to eradicate the Bushmen and tried its best to preserve them as a potential source of labour for the colony's economy. This does not exclude incidental violence, personal retaliation during Bushmen raids (in which farmers who had been robbed were often allowed to participate), and atrocities against Bushmen. But it does exclude genocide in the sense of ICL.

³⁸ Lüderitzer Minenkammer an Kaiserliches Gouvernement Windhuk, 29 April 1912, National Archives of Namibia, Gouvernementsakten W1102, betr. Buschleute speciala. The background of the intervention was fear of the mines; the Bushmen raids would deter Ovambo from migrating to the mines and thus exacerbate the labour shortage.

CONCLUSIONS

There can be no doubt about the cruelty and arbitrariness which guided the policy of the German colonial authorities when they dealt with the Herero, the Nama, the Bushmen, and the various ethnic groups involved in the Maji-Maji uprising, and one is tempted to call all these actions, which caused so much pain and so many casualties, 'genocidal' just because of their often-genocidal consequences for the victim groups. However, in the light of modern ICL, in East Africa and with regard to the Bushmen in South West Africa, no genocide took place and even the war campaign which the Germans waged against the Herero and the Nama was not genocidal. Genocide occurred only later, in the camps and during the deportations, and it caused far fewer victims than the fighting before. Actually, most casualties in all these cases were victims of war crimes or – if we want to apply a modern concept which did not yet exist back then – crimes against humanity. This, however, should not be a normative assessment: the Maji-Maji campaign was not better (or less cruel) than the war against the Herero and the Nama just because it does not (or not entirely) deserve the genocide label. The same is true if we reverse this logic: persecuting the Nama and the Herero in camps and sending them to other countries where they had no chance of surviving was not worse than shooting unarmed surrendering Herero belligerents during the war.

Crimes against humanity and war crimes can be crueller than genocide and can also cost more lives. Applying the legal genocide notion to real-world cases from the past neither diminishes nor increases their gravity or repugnance. This notion's purpose is twofold: to obtain a means to distinguish different cases of mass violence, and to avoid a normatively driven inflationary use of the genocide label, which threatens to deprive this notion of any precise meaning, making it instead a tool for victims' groups (and sometimes perpetrator communities) in the fight for access to scarce resources and symbolic capital.

If an inflation of genocides in history and social science must be avoided, then these disciplines need to apply a coherent, non-tautological, comprehensive, and relatively precise notion of genocide. So far, there is none, and almost all attempts to apply the genocide concept in these areas are tainted by their authors' academic or even political or ideologically motivated interest to either prove or disprove that something was genocide. In these cases, the underlying purpose of the definition of genocide is not to enable us to distinguish one massacre from another but to prove that a massacre which an author wants to be a genocide actually was one. The opposite also happens, in which case the author uses a genocide concept of his own making which is tailored in accordance to his wish to prove

that a massacre was not a case of genocide. Open-ended argumentation is scarce in this field, and almost every genocide definition (if an author bases his argument on a definition and does not fail to provide one at all) is tainted by the result which its author wants to achieve. It is an eristic tool rather than an instrument which enables us to distinguish between different kinds of massacres and cases of mass violence.

If historians want to avoid this, they need to adopt the only concept which is currently available, is rooted in law and jurisprudence, and is narrow and precise enough to provide them with a tool for the unbiased assessment of mass violence. This would make it clear that the number or percentage of victims is irrelevant for a genocide finding and that it is the perpetrators' intentions, plans and interactions that are more important than the cruelty of their (or their executors') actions and the damage they did to the victims.

BIBLIOGRAPHY

- 'German Court Finds Former "IS" Member Guilty of Genocide', *Deutsche Welle*, 30 November 2021 <<https://www.dw.com/en/german-court-finds-former-is-member-guilty-of-genocide/a-59976226>> [accessed 30 November 2021].
- Bachmann, Klaus, 'Germany's Colonial Policy in German South-West Africa in the Light of International Criminal Law', *Journal of Southern African Studies*, 43.2 (2017), 331–47
- Bachmann, Klaus, 'The Loathed Tribunal. Public Opinion in Serbia Toward the International Criminal Tribunal for the Former Yugoslavia', in *The Legacy of Crimes and Crises. Transitional Justice, Domestic Change and the Role of the International Community*, ed. by Klaus Bachmann and Dorota Heidrich (Frankfurt: Peter Lang, 2016), pp. 113–34
- Bachmann, Klaus, and Aleksandar Fatić, *The UN International Criminal Tribunals. Transition without Justice?* (London: Routledge, 2014), 199–231
- Bachmann, Klaus, and Gerhard Kemp, 'Was Quashing the Maji-Maji Uprising Genocide? An Evaluation of Germany's Conduct through the Lens of International Criminal Law', *Holocaust and Genocide Studies*, 35.2 (2021), 235–49
- Bachmann, Klaus, and others, 'The Puzzle of Punitive Memory Laws: New Insights into the Origins and Scope of Punitive Memory Laws', *East European Politics and Societies*, 4 (2020), 996–1012
- Becirevic, Edina, *Genocide on the Drina River* (London: Yale University Press, 2014), pp. 81–143
- Bührer, Tanja, *Die Kaiserliche Schutztruppe für Deutsch-Ostafrika. Koloniale Sicherheitspolitik und transkulturelle Kriegführung 1885–1918* (München: Oldenbourg Verlag, 2011)
- Garuka, Christian, 'Genocide Prevention and the Punishment of Genocide Ideology in Rwanda', in *Criminalizing History. Legal Restrictions on Statement and Interpretations of the Past in Germany, Poland, Rwanda, Turkey and Ukraine*, ed. by Klaus Bachmann and Christian Garuka (Berlin: Peter Lang, 2020), pp. 89–106

- Gordon, Robert J., 'Hiding in Full View: The 'Forgotten' Bushman Genocides of Namibia', *Genocide Studies and Prevention: An International Journal*, 4.1 (2009), 28–57
- Gordon, Robert J., *The Bushmen Myth: The Making of a Namibian Underclass* (Boulder: Westview Press, 1992)
- Götzen, Gustav Adolf von, *Deutsch-Ostafrika im Aufstand 1905–1906* (Berlin: Dietrich Reimer, 1909)
- Hoare, Marko Attila, 'A Case Study in Underachievement: The International Courts and Genocide in Bosnia-Herzegovina', *Genocide Studies and Prevention*, 6.1 (2011), 81–97
- Jones, Adam, *Genocide. A Comprehensive Introduction* (London: Routledge, 2006)
- Koposov, Nikolay, *Memory Laws, Memory Wars: The Politics of the Past in Europe and Russia* (Cambridge University Press, 2017)
- KuIß, Susanne, *Deutsches Militär auf kolonialen Kriegsschauplätzen. Eskalation von Gewalt zu Beginn des 20. Jahrhunderts* (Berlin: CH. Links Verlag, 2010), pp. 111–12
- Lau, Brigitte, 'Uncertain Certainties. The Herero-German War of 1904', in *History and Historiography. Four Essays in Reprint*, ed. by Brigitte Lau (Windhoek: National Archives of Namibia, 1995)
- Liebert, Eduard, *Neunzig Tage im Zelt. Meine Reise nach Uhehe, Juni–September 1897* (Berlin, 1898)
- Markusen, Eric, 'Case Study 9: Genocide in Bosnia', in *Teaching About Genocide. Issues. Approaches and Resources*, ed. by Samuel Totten (Fayetteville: IAP Publishing, 2004), pp. 193–202
- Milanović, Marko, 'The Impact of the ICTY on the Former Yugoslavia: An Anticipatory Postmortem', *American Journal of International Law*, 110.2 (2016), 233–59
- Murray, Alexander R.J., 'Does International Criminal Law Still Require a 'Crime of Crimes'? a Comparative Review of Genocide and Crimes Against Humanity', *Goettingen Journal of International Law*, 3.2 (2011), 589–615
- Nersessian, David L., 'Comparative Approaches to Punishing Hate: The Intersection of Genocide and Crimes Against Humanity', *Stanford Journal of International Law*, 43 (2007), 221–64
- Nordbruch, Claus, *Völkermord an den Herero in Deutsch-Südwestafrika? Widerlegung einer Lüge* (Tübingen: Grabert Verlag, 2004)
- Prince, Magdalene, *Eine deutsche Frau im Innern Deutsch-Ostafrikas* (Berlin: E.S. Mittler, 1908; repr. Salzwasser Verlag, 2012)
- Schabas, William, *Genocide in International Law. The Crime of Crimes*, 2nd edn (London: Cambridge University Press, 2009)
- Seeberg, Karl-Martin, *Der Maji-Maji Krieg gegen die deutsche Kolonialherrschaft. Historische Ursprünge nationaler Identität in Tansania* (Berlin: Dietrich Reimer Verlag, 1989)
- Sudholt, Gert, *Die deutsche Eingeborenenpolitik in Südwestafrika. Von den Anfängen bis 1904* (Hildesheim: Georg Olms Verlag, 1975)
- Tröndle, Rainer, *Ungewisse Ungewissheiten. Überlegungen zum Krieg der Herero gegen die Deutschen, insbesondere zu den Ereignissen am Waterberg und danach* (Windhoek: Namibia Wissenschaftliche Gesellschaft, 2012)