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Genocide: A Normative Account by Larry May

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a new, wiser, and more realistic beginning to this beginning.

LINDA A. MALONE
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Genocide: A Normative Account. By Larry May.
 Cambridge, New York: Cambridge University
 Press, 2010. Pp. xi, 283. Index. \$85, cloth;
 \$28.99, paper.

The crime of genocide occupies a special place in the lexicon of international law. In the public imagination, it is the crime of crimes,¹ a signifier of the worst offenses that people have committed against their fellow humans. For the history of international law and international institutions, the offense's codification in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention)² exemplified a turning point in which states committed themselves to a new global order rooted in collective security and in the protection of human rights. The word "genocide," first coined during World War II, also stands as a memorial to the horrors of the Holocaust by providing a new vocabulary to describe a singular crime.

Yet, despite this pedigree—or perhaps in part because of it—the legal and moral concept of genocide as a distinct offense remains troublesome and elusive. How and why should one distinguish this crime of crimes from other offenses of similar scale and cruelty that, for one reason or another, do not satisfy the elements of genocide? How, in particular, should one parse the language of the Genocide Convention, which defines genocide by reference to particular offenses committed with "intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such"?³ Recent years have tested this definition, with mass atrocities in the Balkans, Rwanda, and Sudan sparking controversy over their legal characterization, and with a

proliferation of international criminal tribunals and the International Court of Justice called upon to adjudicate the meaning of genocide. At times, the focus on genocide has threatened to become a distraction, as if to label these crimes something other than genocide is to diminish their gravity, rendering their victims less victimized or less worthy of international attention.⁴ Lurking behind the technical, definitional debates, moreover, is a deeper question regarding the very coherence of genocide as a distinct offense. Is the crime reducible to a normatively satisfying legal definition, one that identifies distinct harms deserving separate legal recognition? Or perhaps is the symbolic weight of genocide more than the law can bear?

Larry May, the W. Alton Jones Professor of Philosophy and Professor of Law at Vanderbilt University, takes on these and related questions in *Genocide: A Normative Account*. The book is the fourth installation in what the author originally conceived as a trilogy focused on the normative foundations of the core international criminal offenses.⁵ Together, these books establish May as one of the foremost theorists of the still emerging domain of international criminal law. This latest work joins its predecessor volumes as required reading for scholars in the field. Like those volumes, *Genocide* is neither a comprehensive legal treatise nor a historical study, terrain already well covered by other authors. Instead, it grapples with

⁴ David Luban, for example, has noted the media's fixation on genocide in the context of Darfur. When the International Commission of Inquiry on Darfur issued a report in January 2005 detailing evidence of serious international offenses, media headlines focused inordinately on the Commission's failure to find conclusive evidence of genocide. David Luban, *Calling Genocide by Its Rightful Name: Lemkin's Word, Darfur, and the UN Report*, 7 CHI. J. INT'L L. 303, 303–04 (2006). One headline described the UN as "Clear[ing] Sudan of Genocide," whereas several others described the Darfur atrocities as "Not Genocide" or "Short of Genocide." *Id.* at 304.

⁵ For the predecessor volumes, see LARRY MAY, *CRIMES AGAINST HUMANITY: A NORMATIVE ACCOUNT* (2004); LARRY MAY, *WAR CRIMES AND JUST WAR* (2007); LARRY MAY, *AGGRESSION AND CRIMES AGAINST PEACE* (2008). May has since published a fifth book focused on procedure, *GLOBAL JUSTICE AND DUE PROCESS* (2011), and he will soon have an additional book, *AFTER WAR ENDS: A PHILOSOPHICAL PERSPECTIVE* (forthcoming 2012).

¹ See, e.g., WILLIAM A. SCHABAS, *GENOCIDE IN INTERNATIONAL LAW: THE CRIME OF CRIMES* (2d ed. 2009).

² Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 102 Stat. 3045, 78 UNTS 277 [hereinafter Genocide Convention].

³ *Id.*, Art. II.

the normative foundations of the crime of genocide. In this pursuit, May's work is wide-ranging, and its numerous contributions resist easy summary. The bulk of May's argument develops a qualified normative justification of genocide as a crime focused on a distinct harm: the loss of identity and status suffered by members of a group on account of efforts to destroy the group. This justification, May argues, flows from his nominalist position that groups as such do not exist in any objective sense and thus cannot be said to suffer harms. The unique harm of genocide, therefore, is one suffered by victims whose lives find meaning in the intersubjective experience of group identity.

This justification is qualified, however, as May's account departs in two respects from traditional notions about genocide. First, May proposes significant revisions to the definition of genocide. He would expand the range of groups protected, and he would also expand the list of prohibited acts to include forms of so-called cultural genocide committed through forced displacement and deprivation of language. Second, May rejects popular views concerning the singularity of genocide. He urges that "we should not continue to talk of the harm of genocide as morally unique and worse than all other international crimes, and hence we should not continue to talk of genocide as the crime of crimes" (p. 78).

In addition to advancing his normative justification for criminalizing genocide as a distinct crime, May dedicates a significant portion of his book to various other claims having to do with the law of genocide. He dedicates individual chapters to the *mens rea* of genocide, to the *actus reus* of genocide, to forms of culpability for genocide, and to the implications of genocide for debates concerning military intervention and the role of reconciliation in addressing past atrocities.

The centerpiece of May's account is his search for the singular harm of genocide, that which justifies the codification of genocide as a distinct offense. Drawing upon Claudia Card's description of genocide as "social death" (p. 78, quoting Card), May argues that genocide is distinguished by a "loss of status and identity" by victims who "will often feel a very significant psychic loss and social disorientation" on account having been

deprived of the group attachments that are central to personal identity (p. 83). This account is intriguing and does indeed capture some of the horror that one associates with genocide. But it is problematic to argue, as May does, that this harm alone justifies the isolation of genocide as a distinct crime. In the first place, this account seems inordinately focused on the suffering of survivors, those who personally escape the destruction of their groups but are forced to live out their lives with a resulting loss of social identity. This victimization, however severe, seems peripheral to the suffering of those actually killed as direct targets of genocidal campaigns. May is right to observe that those killed by genocide can also suffer psychic loss prior to physical death,⁶ but given the vagaries of context and the abundant forms that suffering may take among those who are brutalized and facing annihilation, it is speculative to attach central importance to only a single type of suffering, which may or may not loom large in the psyches of individual victims. For example, the members of a group instantaneously destroyed by a nuclear attack will unlikely have time to experience the social death that May posits. Assuming the attack is undertaken with the requisite genocidal intent, should the victims' lack of foreknowledge nevertheless disqualify us from labeling the crime a genocide?

May's focus on psychic harm also raises difficult questions regarding the relative significance of the social death that he posits. All things being equal, one could expect that survivors will experience greater personal loss from the particular destruction of family, home, friends, and local community—none exclusive to the crime of genocide—than from the destructive impact of genocide on the larger group as a whole. May acknowledges that "it seems the loss of a family member would normally produce more psychic distress than would the forced disconnection from one's group" (pp. 83–84), and he responds by noting ways in which the loss of group identity or status presents harms that are both severe and distinct. For

⁶ May explains that "it also seems sensible to say that a person who has lost a significant group affiliations before death has a worse death than a person who does not" (p. 87).

instance, "[G]roup identity forms part of the mechanism by which people are recognized and identified in society" and "is sometimes a bulwark against loneliness and aloneness that would make one vulnerable to loss of rights protections, as is true of those who are Stateless." (p. 89). But these observations on the undeniable importance of group identity do not, however, address how the emotional loss associated with these harms compares to other forms of emotional loss that are not the focus of a unique criminal offense.

May also concedes that the "main harm of many genocides is that which is shared in common with some of the crimes against humanity, and also with some other international crimes, namely, physical destruction primarily of human beings and communities" (p. 93). Thus, the harm unique to genocide is not the most important harm associated with genocide. Although this concession is helpful in assessing how to weigh the gravity of genocide in comparison to other offenses, it, too, does not explain why one particular type of mental suffering, and not others, necessitates its own criminal offense.

Curiously, May does not address the normative justification that, as a historical matter, figured prominently in the drafting of the Genocide Convention: namely, the idea that genocide victimizes all of humanity "by depriving it of the cultural and other contributions of the group so destroyed."⁷ Perhaps May would find this justification problematic. One may rightly critique it for embracing

an essentialist and reductionist view of identity rooted in nineteenth century German romanticism. But as a *prima facie* matter, this rationale supplies a coherent explanation for how the crime of genocide came to be codified as it did, with its definition focused on protecting the types of group identities that are most commonly associated with distinct cultural traditions.

May dedicates several chapters to the individual elements of the crime of genocide. A chapter on group identity grapples with the types of groups listed in the Genocide Convention being social constructs, ones that are often quite malleable and contested. This problem has famously arisen in the genocide case law of the International Criminal Tribunal for Rwanda (ICTR), which emphasized intersubjective considerations in ruling that Rwanda's Tutsi were a distinct ethnic group, despite being indistinguishable from the majority Hutu population based on racial, religious, linguistic, and cultural criteria. The tribunal emphasized, instead, that the idea of the Tutsi as an ethnic group had gained official juridical acceptance in Rwanda and was embedded in the social imagination of both Tutsi and non-Tutsi.⁸

May's approach follows that of the ICTR by favoring an intersubjective approach to group identity. In this vein, he would amend the definition of genocide to require a definition of group identity rooted in a combination of "in-group" self-identification and "out-group" public recognition, as the "combination of out-group and in-group recognition of certain features as markers of the 'existence' of a group is generally a telling sign of the possibility that such a group could be the object of harms such as genocide" (p. 49). In other words, a group exists for purposes of the Genocide Convention when both members and nonmembers of the posited group publicly accept the existence of the group.

While I endorse May's view that group identity inherently revolves around these sorts of subjective considerations, the required correspondence between insider and outsider identification seems unnecessarily strict. Imagine, for example, a colonial power that seeks to destroy the indigenous

⁷ Convention on the Prevention and Punishment of the Crime of Genocide, Secretariat Draft, UN Doc. E/447 (May 1947); see also GA Res. 96 (I) (Dec. 11, 1946) ("Genocide . . . results in great losses to humanity in the form of cultural and other contributions represented by these human groups."). This rationale traces back to work of Raphael Lemkin, who both coined the term "genocide" and spearheaded the movement to establish genocide as an international crime. Lemkin reasoned that "the world represents only so much culture and intellectual vigor as are created by its component national groups. Essentially the idea of a nation signifies constructive cooperation and individual contributions, based upon genuine traditions, genuine culture, and a well-developed national psychology. The destruction of a nation, therefore, results in the loss of its future contributions to the world." RAPHAEL LEMKIN, *AXIS RULE IN OCCUPIED EUROPE* 91 (1944) (footnote omitted).

⁸ See *Prosecutor v. Akayesu*, No. ICTR-96-4-T, Judgment, paras. 170–71 (Sept. 2, 1998).

population of a colonized territory. The colonizers treat this population as homogenous and justify the destruction based on claims of racial inferiority. The victims, by contrast, do not define themselves in racial terms or with a common identity as they are themselves divided into various, often competing, clans reflecting a diversity of linguistic, religious, and cultural traditions. Although both the perpetrator and the victim would agree that one or more protected groups are being destroyed, the perpetrator's intended target—the indigenous population as a single racial group—has no in-group identification, thus suggesting that May's requirements are not met.

To take a historical example, it is unclear how even the Holocaust—which directly inspired the Genocide Convention and which May describes as a paradigmatic genocide—fares under May's model. According to the Nazi racial ideology, a self-identifying Christian citizen of Poland with no matrilineal link to Judaism might still be subjected to the gas chambers on account of biological descent from one or more Jewish grandparents. But a strict application of May's approach would suggest that this victim, assuming that she does not self-identify as Jewish, is not a victim of genocide. As this example shows, even where there is public agreement that a group known as "Jews" exists, the term can be a floating signifier conveying different meanings to different people.

Both cases, in my view, should qualify as genocide. Part of the horror lies precisely in the perpetrator's reduction of rich, complex human lives to a single group label. Grotesque oversimplification is endemic to the history of genocide, and it would be odd to deny liability on the ground that the perpetrator's view of group identity is *too* simplistic. May defends his apparently stricter standard by arguing that a correspondence between in-group and out-group identification is necessary to avoid extending the label of genocide to perpetrator-invented categories such as "all of those persons who wear eyeglasses" that do not correspond in any way to meaningful group identities (p. 49). Other ways to address that concern, however, exist. For example, the law could require that the perpetrator's identification of a target group meet some reasonableness threshold, even if it turns out

that the victim and perpetrator do not agree on the categorization or existence of the targeted group.

Notably, May's definition would extend to the destruction of groups not belonging to the four types specified in the Genocide Convention.⁹ He advocates an open-ended definition applying to any "publicly recognized group that is relatively stable and significant for the identity of its members, *such as* a national, ethnical, racial, or religious group, as such" (p. 58, some emphasis omitted). Although May argues that this definition would resolve the long-standing debate over the exclusion of social and political groups by extending protection to them as well, he does not explain how such groups meet his criteria. Smaller family units—even nuclear families—seem a better fit for May's model on account of the stability and significance they hold for their members, but May does not explore how we would address this counterintuitive possibility.

With respect to genocidal intent, May argues that the commission of genocide must manifest a deliberate purpose to destroy a group in whole or in part. In requiring that a genocidal purpose exist at some level, May devotes several pages to critiquing my previously published argument that awareness of destructive consequences should establish genocidal mens rea in defined instances of discriminatory acts likely to result in the destruction of a protected group in whole or in part, even absent an actual purpose to destroy the group as such.¹⁰ Although May's position is the mainstream one, his two supporting arguments do not resolve this debate.¹¹ May argues first that his view is most

⁹ As noted, the Genocide Convention defines genocide's mens rea by reference to an "intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such." Genocide Convention, *supra* note 2, Art. II.

¹⁰ See Alexander K. A. Greenawalt, *Rethinking Genocidal Intent: The Case for a Knowledge-Based Interpretation*, 99 COLUM. L. REV. 2259 (1999).

¹¹ I choose to focus here on May's argument that "[i]t is indeed crucial that there be a plan that has as its purpose the destruction of a protected group in whole or in substantial part" (p. 126). I do not here address May's additional arguments regarding what is, in my view, the less central question of what individual mens rea is required to attach culpability to individual participants in such a plan.

compatible with the drafting history of the Genocide Convention. Assuming that he is right (and the matter is disputed¹²), the intent of the drafters can have only limited relevance for a normative account that does not place great emphasis on their intent and that elsewhere proposes substantial amendments to the existing definition of genocide. May also approvingly cites tribunal case law upholding a purpose-based approach that takes into account the extraordinary gravity of the crime of genocide.¹³ This reliance on extraordinary gravity sits in tension with May's view that genocide "should not be seen as morally unique and significantly worse legally than all other serious international crimes" (p. 1). These other crimes have no comparable purpose requirement.

May's approach would also benefit from a more fact-specific exploration of what exactly genocidal mens rea entails. Imagine, for example, that officials investigating crimes for the International Criminal Court (ICC) come into possession of a tape recording of the following hypothetical conversation between a hypothetical political leader and a hypothetical military commander:

1. Political Leader: It is time to crush the rebellion once and for all. I have determined that we must exterminate the non-Arab population of our country.
2. Military Commander: To be clear, this will entail the destruction of three ethnic groups: the X, the Y, and the Z.
3. Political Leader: Yes, I am aware of that.
4. Military Commander: Shall we then proceed with the destruction of those three ethnic groups?
5. Political Leader: Yes, we must destroy the X, the Y, and the Z.

The evolution of how Political Leader frames her plan may seem to be purely a matter of semantics, but if I have read both May's work and the relevant case law correctly, it is only when we reach Statement 5 that we have clear evidence of genocidal intent. Because the negatively defined non-

Arab population described in Statement 1 is not itself a national, ethnical, racial, or religious group, this statement runs afoul of an ICC pretrial chamber ruling, in the context of allegations of genocide against Darfur's non-Arab population, that genocide is "a matter of who the targeted people are, not who they are not."¹⁴ Statement 1 also does not pass May's more expansive account of group identity because, unless the victim population self-identifies as part of a general non-Arab group (rather than simply as members of a specific group respectively), no correspondence exists between in-group and out-group identification.

What about Statement 3? It comes closer because now Political Leader has manifested her awareness that proceeding with the campaign will entail the destruction of three distinct ethnic groups. But both May and the tribunal case law tell us that such awareness is not enough. Only at Statement 5 do we see Political Leader describe her plan in language reflecting a purpose to destroy the groups. Even here, one may protest that the true purpose remains the general destruction of non-Arabs, rather than the destruction of the particular groups. But that ulterior purpose is now irrelevant pursuant to the view that it is specific intentions, rather than motives, that matter for genocidal intent. May argues that "motive should not be part of the elements of any crime, and most especially the crime of genocide" (p. 138). That Political Leader's intention to destroy the groups is motivated by a broader Arab chauvinism or by political self-preservation is no more relevant than that an architect of the Holocaust may have been motivated by a desire to preserve German racial purity or to achieve personal enrichment.

My problem with this purpose-driven account is that I cannot identify a moral justification for distinguishing between the three mental states

¹² See Greenawalt, *supra* note 10, at 2270–79.

¹³ In this context May quotes *Prosecutor v. Krstić*, Judgment, No. IT-98–33–A, para. 134 (Apr. 19, 2004) (p. 128).

¹⁴ *Prosecutor v. Al Bashir*, No. ICC-02/05-01/09-3, Decision on the Prosecutor's Application for a Warrant of Arrest Against Omar Hassan Ahmed Al Bashir, para. 135 (Mar. 4, 2009). The ICC appeals chamber subsequently reversed the trial chamber ruling on the unrelated ground of having applied the wrong burden of proof at the pretrial stage. See *Prosecutor v. Al Bashir*, No. ICC-02/05-01/09-OA, Judgment on the Appeal of the Prosecutor Against the "Decision on the Prosecution's Application for a Warrant of Arrest Against Omar Hassan Ahmed Al Bashir" (Feb. 3, 2010).

manifested by Political Leader. She herself would be unlikely to acknowledge or even perceive a shift in her intentions as she progressed from Statement 1 to Statement 5. The destructive effect—including the extent of lost status and identity suffered by the victims—is the same regardless of how the leader frames her plan behind closed doors. And despite rhetorical support for a strict mens rea standard, the tribunal case law has been far from consistent in applying the law to actual cases.¹⁵ A robust defense of the purpose-based approach to genocide therefore requires more attention to these ambiguities than the existing case law and literature—including May's work—have given it.

Whereas May defends a narrow construction of intent, he argues that the list of enumerated genocidal acts should be broadened to include forcible transfers of populations (so-called "ethnic cleansing") and the suppression of native language. This proposal revives drafting-era debates over whether and to what extent the Genocide Convention should recognize crimes of so-called cultural genocide. Here, May's views flow logically from his argument that loss of identity and status, rather than physical destruction, defines genocide. He also finds support in the Genocide Convention itself, which contemplates that genocide can be accomplished through the culturally destructive act of "[f]orcibly transferring children of the group to another group" (p. 109).¹⁶ May defends against slippery-slope objections by observing that none of the additional acts he identifies could be genocidal unless committed with the requisite genocidal intent. Nevertheless, his proposal exposes itself to a different objection: that it dilutes the concept of what it means to "destroy" a group,

given that group identities can and often have survived geographic dislocation and linguistic changes. The perseverance of Jewish identity across different regions and languages is just one among many examples.

May rounds out his book with chapters focusing on standards of individual responsibility for genocide and on the respective problems of humanitarian intervention and postconflict reconciliation. Although much is of interest here, the material is largely tangential to May's core normative account. These chapters are also vulnerable to the critique that they deal with general issues of criminal law and international policy that are not uniquely affected by the specific context of genocide. Thus, for example, in his chapter on complicity, May argues that "legal complicity that leads to criminal prosecution should be restricted to those cases where one knows, or should have known, that one is in a sense participating in an enterprise, by one's commission or omission, that risks harm" (p. 170). This negligence-based standard would stretch the limits of criminal responsibility beyond that which has prevailed in domestic or international criminal law. Yet May neither explores whether he thinks that the law of complicity should be different for genocide than for other crimes nor situates his argument in the context of existing national approaches to complicity, which also reflect substantial differences among legal systems.¹⁷ May's analysis of individual liability is also selective. Although he dedicates chapters to complicity and incitement, he includes no material on conspiracy and attempt, both punishable under the Genocide Convention.¹⁸ In addition, he does not address the doctrines of superior responsibility

¹⁵ Most notably, in ruling that the murder of 8,000 men in and around Srebrenica reflected genocidal intent, an ICTY trial chamber observed that the "Bosnian Serb forces could not have failed to know, by the time they decided to kill all the men, that this selective destruction of the group would have a lasting impact upon the entire group." *Krstić*, No. IT 98-33-T, Judgment, para. 595 (Aug. 1, 2001). Elsewhere in the same decision, however, the same trial chamber expressly rejected the view that mere awareness of group destruction is sufficient for genocidal intent. *Id.*, para. 571.

¹⁶ See also Genocide Convention, *supra* note 2, Art. II(e).

¹⁷ See Markus Dubber, *Criminalizing Complicity: A Comparative Analysis*, 5 J. INT'L CRIM. JUST. 977 (2007). I have argued elsewhere that international law does not have the same stake in resolving differences among domestic approaches to the general part of criminal law—including modes of liability—as it does in defining international offenses such as genocide, crimes against humanity, and war crimes. See Alexander K. A. Greenawalt, *The Pluralism of International Criminal Law*, 86 IND. L.J. 1063 (2011).

¹⁸ Genocide Convention, *supra* note 2, Art. III.

and joint criminal enterprise, each of which international tribunals have employed to convict suspects and each of which has provoked debate in the context of genocide.¹⁹

Similar problems pervade May's chapters on humanitarian intervention and reconciliation. Both topics—whether the prevention of serious international crimes can justify otherwise illegal military interventions and how one should balance the interests of postconflict reconciliation with those of retribution—have commanded substantial analysis and debate. These questions arise in the context of genocide, but neither is exclusive to the crime of genocide. With respect to humanitarian intervention, he argues that the particular gravity of genocide affects the balancing that must take place when deciding whether, under the circumstances, atrocities are sufficiently severe to justify intervention. This point is relatively modest, but its emphasis on gravity once again highlights the core ambiguity in May's argument that genocide involves unique harm but is not morally unique compared to all other international offenses.

The central difficulties in the law of genocide are not, of course, ones of May's making, and his book deserves credit for carefully revealing both the necessity of a normative justification and the complex nature of that project. Whether May succeeds in justifying the offense's group-based focus is a more debatable question. I suspect that many of May's readers will be equally inclined to abandon the idea of genocide as a meaningful legal concept or perhaps to agree with David Luban that the concept of genocide must extend beyond group destruction to include all large-scale massacres that are currently proscribed by the crime against humanity of extermination.²⁰ In either event, *Genocide: A Normative Account* will be required reading for those pursuing these questions.

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¹⁹ See, e.g., SCHABAS, *supra* note 1, at 351–55, 361–66.

²⁰ See Luban, *supra* note 4, at 319–20.

BRIEFER NOTICE

Commentario breve al diritto dell'arbitrato nazionale ed internazionale. By Massimo V. Benedettelli, Claudio Consolo, and Luca G. Radicati di Brozolo. Milan: CEDAM, 2010. Pp. xxxv, 1062. Index. €130.

This Italian book is both unusual and innovative. It is not a traditional commentary on legal texts. Instead, in a single volume, it adopts a new approach to collecting and analyzing the norms governing Italian and international arbitration.

The authors, Professors Benedettelli, Consolo, and Radicati di Brozolo, are three well-known Italian academics who are also highly respected international arbitration practitioners. They directed and coordinated the work with the assistance of thirty colleagues, both Italian and non-Italian. All have extensive arbitration expertise.

Commentario is divided in two parts. The first, characterized by a more “classical” method, concerns domestic Italian arbitration. This part provides a traditional overview of the principles of Italian civil procedure and various laws governing specialized arbitral proceedings in corporate law, labor law, and administrative law. The second part of the book, more relevant to the present review, focuses on international arbitration. It seeks to be a practical tool for international arbitration practitioners and to contribute to a deeper understanding and greater development of international arbitration in Italy. The introduction to the second part explains the characteristics of international arbitration and highlights its main differences from domestic arbitration, particularly useful to readers who are less experienced in international arbitration.

Instead of analyzing a single normative source as is usually done by most treatises, the discussion of international arbitration provides a detailed assessment of the different applicable norms from a variety of sources: Italian law, foreign laws, international law, treaties and conventions, and the rules of arbitral institutions. *Commentario* is based on the premise that international arbitration—by its very nature—relies on interrelated sources, such as codified norms and arbitral case law and practice (the transnational *lex arbitri*).