

Institution: University College London		
Unit of Assessment: UoA 18 – Law		
Title of case study: Re-framing cultural, legal and public understandings of atrocities and their perpetrators, for global audiences		
Period when the underpinning research was undertaken: 2002–2014		
Details of staff conducting the underpinning research from the submitting unit:		
Name(s): Philippe Sands	Role(s) (e.g. job title): Professor of the Public Understanding of Law	Period(s) employed by submitting HEI: 2002–ongoing
Period when the claimed impact occurred: 2013–2020		
Is this case study continued from a case study submitted in 2014? No		
<p>1. Summary of the impact (indicative maximum 100 words)</p> <p>Professor Philippe Sands' research, leading to the multi-award-winning <i>East West Street: On the Origins of Genocide and Crimes against Humanity</i> (2014), has blended international legal history, biographies of leading lawyers, and family history, in a way that has:</p> <ul style="list-style-type: none"> (i) generated substantial new cultural artefacts on history, law and justice; (ii) globally engaged diverse groups in international criminal law and justice, and strengthened the campaign for a new convention on crimes against humanity; (iii) facilitated active practices of memorialisation and commemoration; and (iv) injected momentum into public reckoning over responsibility for past atrocities. <p>Audiences of millions around the world have been introduced to a history of international criminal justice they would not otherwise have known, and have been invited to reflect on our legal apparatus for international criminality and our reckoning with the past.</p>		
<p>2. Underpinning research (indicative maximum 500 words)</p> <p>Professor Sands has developed a body of work on crimes against humanity, genocide, and the post-WWII development of international law and courts, alongside his work as a barrister in connection with crimes of this nature. This research has explored the trajectory, promise and limits of prosecutions for international crimes, both before international tribunals and before national tribunals exercising 'universal jurisdiction' (permitting prosecution even where the prosecuting state has no particular connection to the crimes). Thus, Sands' 2003 analysis of International Court of Justice and national jurisprudence on atrocity crimes discussed developing law on the immunity of current and former high officeholders, the competing visions of international law underpinning these cases, and their effects on prospects for prosecution of international crimes before national courts (R1). In 2010, in reflection of his prominence in the field, Sands was invited by the law faculty of Ivan Franko National University of Lviv (now in Ukraine) to speak about his work on atrocity crimes, and the enduring consequences of the post-WWII Nuremberg trials for the world. This invitation brought Professor Sands to a city that was the birthplace of his own grandfather, and to a university at which Hersch Lauterpacht and Raphael Lemkin, lawyers who would go on to play major roles in the prosecution of Nazi crimes, had both studied in the early 20th century.</p> <p>The visit to Lviv, and Sands' encounter with intersecting life stories linked to the city, ignited a project that traced the evolution of concepts that have dominated Sands' work as an academic and a barrister, as well as Sands' own family history. His consequent exploration of the roots of international criminal law involved legal research into the Nuremberg proceedings, and archives including the papers of Robert H Jackson (Chief Prosecutor at Nuremberg), and the Lauterpacht family papers. The latter yielded Lauterpacht's drafts of sections of the opening and closing speeches given by the British prosecutor, Sir Hartley Shawcross, at the Nuremberg International Military Tribunal. In an analysis introducing publication of these Lauterpacht drafts for the first time,</p>		

Sands traced Lauterpacht's thinking (some of which had been omitted from the final speeches as given) on the characterisation of crimes, including the relationship between 'crimes against peace' (i.e. waging aggressive war), 'crimes against humanity', and 'war crimes'; and individual and state responsibility for these crimes (**R2**). Sands also pursued interviews with survivors from Lviv, relatives of those involved at Nuremberg, and his own family. These encounters sparked and complemented his archival inquiries and allowed Sands to develop a mode of writing which, as in a 2011 lecture, 'A Memory of Justice' (**R3**), interwove personal histories with the development of international criminal law. These threads of research and methodological innovation were critical to Sands' authoring of the best-selling and award-winning non-fiction book *East West Street* (**R4**) (**EWS**).

EWS reveals how thinkers like Lemkin and Lauterpacht sought to adapt the apparatus of law to address unprecedented atrocity. *EWS* brings into focus conceptual and practical differences between the legal categories that these men developed: 'crimes against humanity' (which captures large-scale brutality, often, but not necessarily, directed against identifiable groups), and 'genocide' (coined as a new crime by Lemkin to capture the—in some views particular—horror of conduct which, while committed against individuals, seeks to eliminate certain human groups). Sands' unique narrative style blends the fruits of deep research with the process of research itself, a feature that (inter alia) involved discussion of his own interaction with the descendants of the leading Nazis. This novel research output prompts fresh, complex questions about the role of present-day individuals in confronting the responsibility of their own families and societies for past atrocities.

3. References to the research (indicative maximum of six references)

R1. Philippe Sands, 'International Law Transformed? From Pinochet to Congo?' (2003) 16 *Leiden Journal of International Law* 37–53.

R2. Philippe Sands, 'Twin Peaks: The Hersch Lauterpacht Draft Nuremberg Speeches' (2012) 1 *Cambridge International Law Journal* 37–44 (formerly *Cambridge Journal of International and Comparative Law*).

R3. Philippe Sands, 'A memory of justice: the unexpected place of Lviv in international law—A personal history' (2010) 43 *Case Western Reserve Journal of International Law* 739–758.

R4. Philippe Sands, *East West Street. On the Origins of Genocide and Crimes against Humanity* (Weidenfeld & Nicolson 2016).

Prizes include: Baillie Gifford Prize for Non-Fiction (2016); British Book Awards: Non-Fiction Book of the Year (2017); Hay Festival Prize for Prose (2017); Prix Montaigne de Bordeaux 2018 (for French translation *Retour à Lemberg*) (2018)

4. Details of the impact (indicative maximum 750 words)

The unique methodology of Sands' research makes *EWS* exceptionally gripping, and thus conveys the history and potential of international criminal justice to a global readership (more than 200,000 copies sold in print; with further e-book and audiobook sales; translated into 22 different languages). The book has:

(i) Generated substantial new cultural artefacts on history, law and justice, drawing directly on the personal stories from *EWS* (**R4**) and their lessons of the Holocaust:

- A performance piece, *A Song of Good and Evil*, written by Sands and interweaving the story and prominent figures from *EWS* with photographs and music from their lives (debuted London Southbank Centre 2014; performed in English, French and German, at more than 24 venues in 11 different countries, viewed by more than 20,000 people); and
- A documentary film, *My Nazi Legacy: What Our Fathers Did*, featuring descendants of Nazis whom Sands met in the course of researching *EWS* (premiered April 2015, Tribeca Film Festival; screened in cinemas in 6 countries from Apr–Nov 2015—the UK, US, Israel, Canada, Germany and Sweden; broadcast by BBCFour 4 times in 2016; and made available on DVD and Amazon Prime video internationally); and

- A BBC Radio 4 podcast, *'The Ratline'* (live audience ~900,000; more than 2.2m downloads) with Sunday Times bestselling book, *'The Ratline: Love, Lies and Justice on the Trail of Nazi'* (Weidenfeld & Nicolson 2020), tracing the family history of one of these figures (55,000 copies sold in UK across print, e-book and audiobook to 31 December 2020; translation into 3 languages) (S1).

EWS, together with these new cultural artefacts, and Sands' extensive research-informed engagement (detailed below), has led to three further kinds of impact:

(ii) Globally engaging diverse groups in international criminal law and justice, and strengthening the campaign for a new convention on crimes against humanity

The intense interest in the book (at least 35 reviews in leading national newspapers, global press, and practitioner publications (S2)) reflects its **unique ability to inform diverse publics about the history and promise of international criminal law**. Sands has given hundreds of talks in over 30 countries to groups including: **judges** (of the High Court, Court of Appeal, UK Supreme Court, European Court of Justice, European Court of Human Rights); **lawyers** (Bar Council of England and Wales, Scottish Faculty of Advocates, American Society of International, British Institute of International and Comparative Law); **Jewish communities** (American Jewish Historical Society, USC Shoah Foundation, Yad Vashem UK Book Club); and the **general public** (e.g. Hay Festival events on *EWS* in 2016, 2017). The book has sparked **interest and engagement in a range of communities**, from the Civil Service Champion for Faith and Belief blogging about *EWS* (2019) and inviting civil servants to participate in Holocaust Memorial Day events (S3); to the NGO RightsInfo (now EachOtherUK), making a short video drawing from Sands research, *Hersch Lauterpacht: Hero of Human Rights*, for the #FightHateWithRights campaign, designed to counter racial and religious discrimination and illuminate the importance of law in this struggle (over 40,000 views on Facebook) (S4).

The widespread public interest aroused by *EWS* has **offered a platform for powerful messages about atrocity crimes**. Most obviously, as the Civil Service Champion for Faith and Belief wrote after reading *EWS*: *'Genocide doesn't just happen, it's the culmination of unchecked discrimination, racism and hatred over a period of time. Looking the end point in the eye is a good way to remind ourselves of the need to stay alert to the early signs and act quickly to correct them'* (S3). In his public engagements, Sands has constantly forged links between past and present, **explaining both the importance, and limits, of the current legal apparatus for responding to such crimes**. Drawing on insights from *EWS* about the evolution of the definition of genocide, for example, Sands has emphasised how difficult it may be to establish that even horrific persecution reaches the threshold for 'genocide'. In speeches, interviews and op-eds on current events, including the mass repression in Xinjiang, Sands has underlined the resulting need to avoid focusing exclusively on the label 'genocide', and to pursue through law all mass atrocities as offensive to our shared humanity (S5).

Sands' use of the insights and platform offered by *EWS* has **helped persuade government and NGO audiences of the need for a new convention on crimes against humanity**, articles of which have been drafted by the International Law Commission (ILC). Such a convention—intended as a more extensive parallel to the existing Genocide Convention (1948)—would require states parties to criminalise crimes against humanity under national laws (which only around half of states have done to date), and to either submit for prosecution or extradite individuals found in their territory and suspected of crimes against humanity, even when the crimes were committed abroad and have no other connection with the state in question. Treaty obligations of this kind would expand prospects for prosecution of crimes against humanity before national tribunals exercising universal jurisdiction, complementing the role of international tribunals like the International Criminal Court. The Special Adviser to the International Criminal Court Prosecutor on Crimes against Humanity and head of the 'Crimes against Humanity Initiative' which has, since 2008, spearheaded the campaign for a new treaty, testifies that *EWS*, and Sands' addresses and performances, have lent *'considerable momentum and gravitas'* to the project of establishing a new convention. She recalls that *'[w]hen we first began [the Crimes against Humanity Initiative to press for a new convention], many doubted the need for a new treaty on crimes against humanity, because the Genocide Convention was already in force.'* Sands' book *EWS* *'underscores why the*

two crimes [crimes against humanity and genocide] are different and why both are necessary elements of any attempt to address the problem of mass atrocities', and 'helped to transform the conversation around this proposed new treaty' (S6). The Special Rapporteur leading the drafting project at the ILC testifies that 'in my interactions with governments and non-governmental actors ... it was clear that the book had provided an excellent and engaging history ... opening the door to reflections on contemporary atrocities and why it is so important to do something to prevent them'; and that he has used 'synergies ... between [EWS] and promotion of the work of the [ILC] at conferences [and] workshops worldwide, including in Addis Ababa, Cairo, Lima, London, New York, Nuremberg, Seoul, and Singapore' (S7). A new convention is a major endeavour, particularly in current geopolitical circumstances, but, from an inauspicious start, there is now a vibrant campaign for a new treaty on crimes against humanity. The COVID-19 pandemic has slowed the calling of a conference to transform the draft articles into a convention, but the topic is on the UN General Assembly agenda for autumn 2021.

(iii) Facilitating active practices of memorialisation and commemoration

*EWS has enabled active commemoration of the Holocaust and legal innovation in response to it. **Public addresses by Sands and screenings of *My Nazi Legacy* to mark Holocaust Memorial Day have helped keep the events of the Holocaust, and the imperative to avoid any repetition, to the fore of public attention, including for younger generations** (e.g. at the University of Glasgow (2017), University of Sussex (2018) and the Peace Palace (the Hague) (2020)). **The new cultural artefacts developed from EWS have made possible unique formal and public events:** *A Song of Good and Evil* was performed in the site of the Nuremberg trials, Courtroom 600 of Nuremberg's Palace of Justice, at the invitation of the German Government, to mark the 70th anniversary of the opening of the trials. **Sands' research has animated events at museums and memorial foundations, helping maintain a vibrant program of public engagement and historical inquiry** (including at US Holocaust Memorial Museum (2016, with Niklas Frank, son of leading Nazi), Ambassador Conference of the Holocaust Educational Trust (2016), Montreal Holocaust Museum (2018), Imperial War Museum (London) (2018), and Wiener Library's *Crimes Uncovered: The First Generation of Holocaust Researchers Uncovered* exhibition (2019)). The Imperial War Museum (IWM, London) has included reference to Lauterpacht and Lemkin's role in post-WWII criminal justice in its major new Holocaust Galleries (opening now postponed to autumn 2021), informed by EWS. Suggestions and introductions from Sands to archives and family members are *'enabling [IWM] to use and display assets [it] would not otherwise have been able to access'* (S8).*

*The **personal stories in EWS have lent commemorative activities an unusual power and resonance in communities globally, from Lviv to Norwich.** At a 2017 conference in Lviv inspired by EWS, lawyers, judges, historians and relatives of key protagonists walked from the city centre to the former Jewish ghetto, and unveiled plaques at the houses of Lauterpacht and Lemkin. Some Ukrainian participants reported that the conference had facilitated discussions about the past that had hitherto been difficult, because of different groups' disparate experiences of violence and persecution under the city's alternating Soviet occupation (1939–41), Nazi occupation (1941–44), and Soviet rule (from 1944) (S9). In addition to reviving stories of well-known individuals, EWS has **brought to light figures otherwise lost to history**, like Elsie Tilney, a Norwich missionary who had carried Sands' mother as an infant from annexed Austria to Paris, and, while interned in France, protected Jewish internees. Sands' unearthing of this story led to: Tilney's recognition as Righteous Among the Nations by Yad Vashem (Israel's Holocaust remembrance foundation); a medal presentation by the Israeli Ambassador to a living relative; and a service at Tilney's church in Norwich, where her story had been entirely unknown (S10).*

(iv) Injecting momentum into public reckoning over responsibility for past atrocities

*Through this cycle of public engagement, research and cultural production, Sands' research has **sparked public debate about conceptions of responsibility for past wrongs by family members and co-nationals of perpetrators.** Most relevantly in this respect, research for EWS opened dialogue between Sands and the sons of Nazi leaders Hans Frank (Governor-General of occupied Poland) and Otto von Wächter (Governor of Lviv). During Sands' research for EWS, the director David Evans proposed a film about Horst von Wächter (Otto's son), leading ultimately to the award-winning documentary, *My Nazi Legacy* (referred to in (i) above). In 2014, Sands*

moderated a discussion at Southbank Centre between Horst von Wächter, who remained protective of his father, and Niklas Frank, who judged his father harshly. A reviewer of the debate, which had been filmed for the documentary, noted that this was '*the first time [the two sons'] views had been discussed in public*'; a '*packed—and surprisingly young—audience*' listened in '*rather tense silence*' to von Wächter's defences of his father, breaking into '*highly-charged applause*' at an audience member's intervention (S11). Horst von Wächter's reference in the course of this discussion to his father being revered in Ukraine in turn prompted further filming of an event in Ukraine celebrating Otto von Wächter's Waffen SS Division, allowing the documentary to highlight the persistence of far-right sympathy and activity today.

This cycle of public engagement, research and cultural production has in turn seeded new inquiries over responsibility for past atrocities. The podcast and subsequent best-selling book *The Ratline* (2020), referred to in (i) above, uses the story of Otto von Wächter to open new questions about the complicity of the Vatican and Allied powers in allowing former Nazi leaders to escape justice. Professor Sands' work has also made available a rich resource of archives from which other scholars may derive insights of their own. Sands facilitated an approach by the US Holocaust Memorial Museum to digitise the von Wächter family archive, and these records have now been made freely available to all online. The Senior Project Director of the Museum's International Archival Programs Division testifies that it is '*exceedingly rare and difficult to identify personal collections of former Nazi and SS officials, let alone be able to acquire them*'. These records, rare in themselves, '*provide intimate insights*' into the trajectories of former Nazis in flight. Supplemented by Sands' painstaking research, these previously unseen historical materials offer '*intellectual access into one of the most secretive and little understood aspects of Holocaust history*' (S12), opening a path for others to explore the choices made by Allied governments in dealings with these individuals in the post-war period.

5. Sources to corroborate the impact (indicative maximum of 10 references)

S1. Details of cultural artefacts developed from *East West Street* (PDFs available upon request).

S2. *East West Street*: sample of reviews (PDFs of full reviews available on request).

S3. Clare Moriarty, 'Why we must remember the Holocaust', 21 Jan 2019, <https://civilservice.blog.gov.uk/2019/01/21/why-we-must-remember-the-holocaust/>.

S4. 'Hersch Lauterpacht: Hero of Human Rights' video on Facebook: <https://bit.ly/37v4isl>

S5. See, e.g., Sands, 'Genocide or not, the Uighurs need urgent international support', *Financial Times*, 28 July 2020, <https://www.ft.com/content/8b712431-8c39-40a3-9390-c4d53624139f>.

S6. Testimonial of Special Adviser to the International Criminal Court Prosecutor on Crimes against Humanity and head of the 'Crimes against Humanity Initiative', 25 Nov 2020.

S7. Testimonial of Special Rapporteur leading International Law Commission drafting of articles for a new convention on crimes against humanity, 16 Nov 2020.

S8. Testimonial of Content Leader, Holocaust Galleries, Imperial War Museum, 22 Feb 2021.

S9. Sarah Nouwen, 'A Moving Conference: Rights, Justice and Memories of the City', 21 Nov 2017, <https://www.ejiltalk.org/a-moving-conference-rights-justice-and-memories-of-the-city/>.

S10. Chris Hill, 'Elsie Tilney, Norwich's unsung heroine of the Holocaust, given international honour by Yad Vashem', *Eastern Daily Press*, 20 Jan 2015: <https://bit.ly/3pCN0A2>

S11. Emma Jacobs, 'Sons of top Nazis display different reactions their fathers' Third Reich roles', *Financial Times*, 14 Feb 2014: <https://on.ft.com/3qFePsX>

S12. Testimonial of Senior Project Director, International Archival Programs Division, US Holocaust Memorial Museum, 20 Nov 2020.