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Edited by Leila Nadya Sadat

Excerpt

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## Crimes Against Humanity and the Responsibility to Protect

Keynote Address by Gareth Evans  
President, International Crisis Group

### I

Mobilizing an effective international response to the scourge of crimes against humanity is, for those of us in the world of policy and ideas who spend a lot of our time trying to do just that, nearly always a matter of more than just abstract, intellectual commitment. I have found that for the great majority of us that commitment has welled up from some personal experience that has touched us, individually, very deeply. For many that will be bound to be scarifying family memories of the Holocaust; for others the experience of personal loss or closely knowing survivors from Rwanda or Srebrenica or any of the other mass atrocity scenes of more recent decades; for others still, perhaps, the awful sense that they could have done more, in their past official lives, to generate the kind of international response that these situations required.

For me it was my visit to Cambodia in the late 1960s. I was a young Australian making my first trip to Europe, to take up a scholarship at Oxford. Inexhaustibly hungry for experience, like so many of my compatriots before and since, I spent six months wending my way by plane and overland through a dozen countries in Asia, and a few more in Africa and the Middle East as well. In every one of them, I spent many hours and days on student campuses and in student hangouts, and in hard-class cross-country trains and ramshackle rural buses, getting to know in the process – usually fleetingly but quite often enduringly, in friendships that have lasted to this day – scores of some of the liveliest and brightest people of their generation.

In the years that followed, I have often come across Indonesians, Singaporeans, Malaysians, Thais, Vietnamese, Indians, Pakistanis, and others whom I either met on the road on that trip or who were there at the time and had a store of common experiences to exchange. But among all the countries in Asia I visited then, there is just one, Cambodia, from which I never again, in later years, saw *any* of those students whom I had met and befriended, or anyone exactly like them – not one of those kids with whom I drank beer, ate noodles, and careened up and down the dusty road from Phnom Penh to Siem Reap in child-, chicken-, and pig-scattering share taxis.

The reason, I am sadly certain, is that every last one of them died a few years later under Pol Pot's murderous genocidal regime – either targeted for execution in the killing fields as a middle-class intellectual enemy of the State or dying, as more than a million did, from starvation and disease after forced displacement to labor in the countryside. The knowledge, and the memory, of what must have happened to those young men and women is something that haunts me to this day.

That memory certainly was a core motivation during the long and grueling years in the late 1980s and early 1990s that I worked as Australian Foreign Minister, along with my Southeast Asian, Chinese, American, and UN colleagues, to find and implement a sustainable basis for peace in Cambodia. It was a recurring motif as I watched, impotently and from a distance, the tragic events in Central Africa and the Balkans work themselves out through the mid- to late 1990s.

It was what made me accept with alacrity the offer of the Canadian government in 2000 to jointly lead a distinguished international commission charged with the task of trying to find, once and for all, a conceptual and practical answer that would unite, rather than continuing to divide, the international community in preventing and responding to mass atrocity crimes, a task that I think we in large measure accomplished by introducing and elaborating the concept of “the responsibility to protect,” the core elements of which are too well known to this audience for me to need to spell them out in detail: That the primary responsibility for protecting its people from atrocity crimes is that of the sovereign State itself; other States have a responsibility to assist it to do so; but if, as a result of either incapacity or ill-will, a State is manifestly failing to give that protection, the responsibility to take appropriate action – which might in an extreme case involve the use of coercive military force – shifts to the wider international community.

It has what kept me engaged ever since – through membership of UN panels, writing a book, and constant advocacy around the world – in the even bigger task of winning and consolidating genuine international acceptance and recognition of this concept as a new global norm and, even more importantly, achieving its effective application in practice as new conscience-shocking situations continue to arise.

And it is what makes me intensely committed to the great enterprise on which this panel of experts is now engaged, on the initiative of the Harris Institute at the Washington University School of Law under the admirable leadership of Professor Leila Sadat, to draft and secure the ultimate adoption of a new Convention on Crimes Against Humanity, to fill a gap that has all too obviously become apparent in the array of legal instruments available to deal with atrocity crimes, notwithstanding the emergence of the International Criminal Court – not least the need for national courts around the world to have clear-cut jurisdiction to deal with these cases, and for there to be in place mechanisms to enable effective international cooperation in the investigation and punishment of perpetrators.

I congratulate Leila Sadat, Cherif Bassiouni, Richard Goldstone, and the other distinguished members of the Steering Committee for this project, and all those

other experts who have contributed so constructively and creatively to the enterprise so far, and have every confidence that it will bear real fruit.

## II

The beginning of wisdom for me on this subject was the realization, very early on, that for all its compelling general moral authority, the Genocide Convention had absolutely no legal application to the killing fields of Cambodia, which nearly everyone still thinks of as the worst genocide of modern times. Because those doing the killing and beating and expelling were of exactly the same nationality, ethnicity, race, and religion as those they were victimizing – and their motives were political, ideological, and class-based rather than having anything to with the characteristics described in the Genocide Convention – the necessary elements of specific intent required for its application were simply not there.

And for all the well-intentioned attempts that have been made many times since – most obviously in Darfur – to try to argue that the “g” word, properly understood, does have application to a much wider range of crimes against humanity, and remains the best linguistic vehicle for energizing mass support and high-level governmental support for effective action in response to newly emerging atrocity situations, the hard truth is that this approach is a lost cause. Lawyers remain lawyers, and there will always be good and compelling legal arguments why the Genocide Convention just does not reach many of the cases we morally want it to – resulting in propaganda victories again and again for those who least deserve to have them as claims or charges are reduced by commissions or courts from genocide to “only” crimes against humanity.

Rhetorically and politically it has always made more sense, following David Scheffer, to make “atrocity crimes” or “mass atrocity crimes” the dominant working concept, rather than becoming caught in the technical cul de sacs of defining the difference between genocide, crimes against humanity, and war crimes, and trying to explain where ethnic cleansing – not a clearly defined crime at all – fits into the other three.

So now it is time, when the debate does have to turn to *legal* remedies, to make “crimes against humanity” the dominant, resonating legal concept, the centrepiece of the argument in the media, and among policy makers, and not just a kind of after-thought category – what one is reduced to when genocide for one technical reason or another is ruled out, or when one has to sweep up some smaller bits and pieces.

“Crimes against humanity” is broad enough conceptually to embrace certainly genocide and ethnic cleansing (if not war crimes, which we will continue to have to refer to separately, but that does not seem a problem). It is a concept with an intellectual and international law pedigree going back a century. Linguistically, the phrase “crimes against humanity” is surely rich and powerful enough for it to carry the moral and emotional weight we want it to. Quite apart from all the good technical reasons for having a new Crimes Against Humanity Convention, the campaign to adopt it should put the concept of crimes against humanity right back on the central pedestal where it belongs.

## III

I see this effort marching in lockstep with the continuing effort to entrench and operationalize the new norm of the responsibility to protect (R2P). They are wholly complementary exercises – in essence, the legal and political faces of the same coin. Persuading the UN General Assembly to endorse the responsibility to protect principle, as was achieved at the 2005 World Summit, was all about winning acceptance for the core idea that crimes against humanity and other mass atrocity crimes were everybody's business, not – as they had been for centuries, and even for the first six decades of the UN's existence – nobody's business.

Promoting the *language* of “the responsibility to protect,” rather than “the right to intervene,” which had so hopelessly divided the global north and south throughout the 1990s, was all about creating the conditions where – when another Cambodia, or Rwanda, or Bosnia, or Kosovo came along, as it surely would – the reflex international response would be not to retreat behind article 2(7) of the Charter and the pretense that this was somehow a matter “essentially within the domestic jurisdiction” of the State in question, but a consensus response that something had to be done, with the only argument being what and how.

For all the bumps and grinds and reverses along the way – and there have been many – I remain personally confident that the consolidation of the responsibility-to-protect norm, as the overall framing principle for international debate on this subject, and the basic guide to appropriate action, is on course.

There remain some conceptual challenges – ensuring that the scope and limits of the doctrine are universally understood, that it is seen to be not about conflict generally or human rights generally or, even more grandly and broadly, human security generally, but about a narrow subset of extreme cases, involving the commission – or likely commission – of mass atrocity crimes, with crimes against humanity at the core. Looked at this way, there are probably no more than ten or fifteen cases at any given time where it is appropriate for the political and policy debate to be conducted in responsibility to protect terms – because large-scale atrocity crimes are being committed, seem imminently about to be committed, or are on a path to being committed in the reasonably near term if appropriate remedial action is not taken, by the State itself or others assisting it. By contrast, there are likely to be 70 or 100 or more country or regional situations where at any given time it is appropriate to talk about conflict prevention or resolution strategies, responses to human rights abuses of various kinds, or reactions to other kinds of human security concerns.

There also remain conceptual challenges in explaining, in an environment where there is still considerable dissimulation going on, as well as genuine uncertainty, which particular cases are properly characterized as responsibility to protect situations and which are not: Why it is, for example, to take those cases most debated in recent times, that the coalition invasion of Iraq in 2003 and Russia's invasion of Georgia in 2008 were *not* justified in R2P terms; that the Burma-Myanmar cyclone in 2008 was not an R2P case, but could have been if the generals' behavior had been characterizable as so

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recklessly indifferent to human life as to amount to a crime against humanity, which in the event it was not; that Somalia and the Congo for many years, Darfur since 2003, and Sri Lanka in the 2009 military endgame have been properly characterized as R2P cases, but where the international community's response has been, for one reason or another, unhappily inadequate; and that Kenya in early 2008 is the clearest case we have had of an exploding situation being widely, and properly, characterized as an R2P one, and where the international community's response – in this case diplomatic mediation – did prove to be adequate to bring it under control.

In addition to the conceptual challenges, there certainly remain institutional ones, in ensuring for a start that well-intentioned States facing atrocity crime problems get in practice all the assistance they need – and which the 2005 UN resolution clearly encourages other States to give them – in terms of capacity building, effective policy formulation and delivery, and – if things get rough and they call for it – the necessary security support. It means also putting in place worldwide the early-warning and response capability, the diplomatic and civilian response capability, the legal response mechanisms, and – for extreme cases – the coercive military capability to ensure that the international community, if it has the will, can deliver the appropriate response to whatever new atrocity crime situation comes along demanding its engagement, again as clearly authorized by the 2005 UN resolution.

One issue that arises in this context is whether, when it comes to putting in place appropriate legal response mechanisms, it is necessary or desirable for the responsibility to protect norm itself to be given some more formal legal status, for example, as David Scheffer has suggested, by incorporating appropriate provisions in the proposed Crimes Against Humanity Convention. In its present draft form, this is focused on individual criminal responsibility, and limits State responsibility essentially to introducing the necessary legislative and other measures to make that real. Scheffer suggests that the Convention also contain State Responsibility provisions expressly prohibiting the commission of crimes against humanity by any State Party entity itself, and requiring States Parties to act, as a matter of legal obligation, in accordance with the 2005 UN resolution.

My own instinct, for what it is worth, although I would certainly be happy to see this debated further, is that while such an exercise would certainly give new weight and prominence to the responsibility to protect norm, and that anything that reinforced the obligations of States to act constructively and not destructively in relation to atrocity crimes would be hugely welcome, the risks probably outweigh the benefits. It would be nightmarishly difficult to get States to sign up to direct legal liability of the kind proposed, be a major distraction that would work against them signing up to anything else, and would in any event not make a great deal of practical difference because any enforcement action against a State itself would have to be a matter for the Security Council, and if the 2005 UN Resolution is to be taken seriously, it already has that role.

In addition to the conceptual and institutional challenges I have described, proponents of the responsibility to protect will always face a political challenge – to

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activate the real-world response that is actually required to avert or halt an atrocity crime catastrophe. That means having in place mechanisms and strategies to ensure both peer-group pressure, by government friends of R2P, to energize the highest levels of governmental and intergovernmental decision-making, and bottom-up grass roots action to kick the decision makers into action if they are showing signs of hesitation.

Mobilizing political will in any policy context whatsoever, national or international, requires the coming together of good information, good organization, and good arguments. As to the last, it is helpful that “national interest” is now a much broader concept than it used to be. It’s not quite as easy now as it was for Chamberlain in the 1930s to talk of faraway countries with people of whom we know nothing: We do know now that States that cannot or will not stop internal atrocity crimes are the kind of States that cannot or will not stop terrorism, weapons proliferation, drug and people trafficking, the spread of health pandemics, and other global risks that every country in the world has a stake in ending.

There is still a long way to go before we can be confident that the automatic consensual reflex of which I spoke earlier will cut in at the time it should and in the way it should in every new case that arises, and longer still before we can credibly claim that the responsibility to protect principle in all its dimensions has evolved into a rule of customary international law. But the evidence is of advance rather than reverse, particularly with the large measure of consensus that seems to have emerged around the UN Secretary-General’s report on the implementation of the responsibility to protect, prepared after long consultations by his special adviser Edward Luck, and, although still not debated by the UN General Assembly at the time of this writing, expected to be formally received with little or no dissent.

The importance of the report is that it does not retreat in any way on the basic principles as they were adopted in 2005, and focuses very constructively on what States need to do for themselves, what others need to do to assist them, and the kinds of prevention, reaction, and rebuilding measures that may need to be employed if a State is unreceptive to self-help or assistance, and atrocity crime alarm bells are ringing. What is intriguing is that some of the States who were last to join the consensus in 2005, and have been most resistant since in expressing support for the concept, have now very definitely changed course, with India’s Foreign Minister Pranab Mukherjee, for example, saying publicly in April this year that the Government of Sri Lanka had a clear “responsibility to protect” its civilians at extreme risk in the final operations of the military against the Tamil Tigers.

## IV

Maybe my confidence is a little premature, but one of the things that has most sustained me over forty years of public life, more than twenty of them working in international affairs, is a fairly unquenchable sense of optimism: a belief that even the most horrible and intractable problems are solvable; that rational solutions for

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which there are good, principled arguments do eventually prevail; and that good people, good governments, and good governance will eventually prevail over bad.

When it comes to international relations, and in particular the great issues of war and peace, violence, and catastrophic human rights violations with which we are concerned here, there is a well-established view that anyone who approaches things in this kind of generally optimistic frame of mind must be incorrigibly naïve, if not outright demented. Certainly in the case of genocide and atrocity crimes – either directly committed by a government against its own people or allowed to happen by a government unable or unwilling to stop it – it is hard for even the incorrigibly naïve to remain optimistic.

In this world we inhabit – full of cynicism, double standards, crude assertions of national interest, high-level realpolitik, and low-level maneuvering for political advantage – it is very easy to believe that ideas do not matter very much. But I believe as passionately now as I ever have in my long career – starting and finishing in the world of nongovernmental organizations, but with much time between in politics and government – that ideas matter enormously, for good and for ill. For all the difficulties of acceptance and application that lie ahead, there are – I have come optimistically, but firmly, to believe – not many ideas that have the potential to matter more for good, not only in theory but in practice, than that of the responsibility to protect.

In the cause of advancing that responsibility, there can be few more constructive contributions to be made than strengthening the direct normative constraints against committing crimes against humanity – sharpening the applicable law, trying to universalize its application, and ensuring its effective enforcement through worldwide cooperation. In all of this, nothing less than our common humanity is at stake, and this group can be collectively very proud of what it is doing to advance it.

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## 1

## History of Efforts to Codify Crimes Against Humanity

*From the Charter of Nuremberg to the Statute of Rome*

Roger S. Clark\*

## I. THE NUREMBERG CHARTER

The modern usage of the words “crimes against humanity”<sup>1</sup> dates from the Nuremberg Charter, article 6(c) of which reads as follows:

CRIMES AGAINST HUMANITY: namely, murder, extermination, enslavement, deportation or other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.<sup>2</sup>

I doubt very much that the drafters of the Nuremberg Charter who gathered in London from June 26 to August 8, 1945 saw themselves as engaged in a codification exercise. In retrospect, the characterization is perhaps not inappropriate, although the term “crimes against humanity,” which provided a catchy title in the Charter to go along with “crime against peace” and “war crimes,” did not make an appearance in the drafting until the very last moment.<sup>3</sup> Until then, the talk had been of

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<sup>1</sup> The author has previously discussed various aspects of this history in Roger S. Clark, *Crimes against Humanity at Nuremberg*, in *THE NUREMBERG TRIAL AND INTERNATIONAL LAW* 177 (George Ginsburgs & V. N. Kudriavtsev eds., 1990), and Roger S. Clark, *Crimes against Humanity and the Rome Statute of the International Criminal Court*, in *INTERNATIONAL AND NATIONAL LAW IN RUSSIA AND EASTERN EUROPE: ESSAYS IN HONOR OF GEORGE GINSBURGS* 139 (Roger Clark, Ferdinand Feldbrugge & Stanislaw Pomorski eds., 2001). The most comprehensive study is M. CHERIF BASSIOUNI, *CRIMES AGAINST HUMANITY IN INTERNATIONAL LAW* (2d rev. ed. 1999). See also Christopher K. Hall et al., *Article 7, Crimes against Humanity in COMMENTARY ON THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT: OBSERVERS' NOTES, ARTICLE BY ARTICLE* 159 (2d ed. 2008); Margaret McAuliffe deGuzman, *The Road from Rome: The Developing Law of Crimes against Humanity*, 22 *HUM. RTS. Q.* 335 (2000).

<sup>2</sup> Charter of the International Military Tribunal art. 6 (c) in 1 *TRIAL OF THE MAJOR WAR CRIMINALS BEFORE THE INTERNATIONAL MILITARY TRIBUNAL* 10, 11 (1947). In a Protocol signed on October 6, 1945, the comma before “or persecutions” in the text above replaced the semicolon that appeared there in the original text adopted in London on August 8, 1945. On the “semi-colon Protocol,” see *infra* notes 14–17.

<sup>3</sup> Clark, *Crimes against Humanity at Nuremberg*, *supra* note 1, at 189–90. Sir Hersch Lauterpacht has been credited with providing this inspired touch. Jacob Robinson, *The International Military Tribunal and the Holocaust: Some Legal Reflections*, 7 *ISR. L. REV.* 1, 3 (1972).



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“atrocities,” “persecutions,” and sometimes “deportations” (it apparently being understood that these were for the purpose of slave labor).<sup>4</sup>

Probably the closest example of usage hinting at what would be “codified” in London was in the declaration of May 28, 1915 by the Governments of France, Great Britain, and Russia concerning the massacres of the Armenian population in Turkey, killings to which the term “genocide” has also since been applied. The three-power declaration described these atrocities as “crimes against humanity for which all members of the Turkish Government will be held responsible together with its agents implicated in the massacres.”<sup>5</sup> The declaration makes the novelty of the complaint clear: This is not a complaint about war crimes inflicted on an adversary; it is about what citizens of the Ottoman Empire were doing to other citizens of the Empire. That would become the gravamen of crimes against humanity at Nuremberg – crimes by Germans against fellow Germans. The 1915 usage of the term, while carefully dealing with situations to which the laws of international armed conflict do not – by their terms at least – apply, nonetheless echoes the principle of the Martens clause of the Fourth Hague Convention.<sup>6</sup> Specifically, to the extent certain matters are not particularly dealt with in the Convention, “the inhabitants and the belligerents shall remain under the protection of and subject to the principles of the law of nations, as established by and prevailing among civilized nations, by the laws of humanity, and the demands of the public conscience.”<sup>7</sup> Whereas the Hague Convention applied by

<sup>4</sup> *Id.* Under the Rome Statute of the International Criminal Court, article 7(1)(d), it is clear that a deportation is, in itself, unlawful, without any further object. *Rome Statute of the International Criminal Court*, United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, July 17, 1998, U.N. Doc. A/CONF.183/9 (1998) [hereinafter *Rome Statute*].

<sup>5</sup> Quoted in Egon Schwelb, *Crimes Against Humanity*, 23 BRIT. Y.B. INT'L L. 181 (1946). Neither the Turkish Government, nor its agents were ultimately “held responsible.” There were provisions (articles 226–30) in the aborted 1920 Treaty of Sèvres between the Allies and Turkey that contemplated trials both for war crimes and for internal “massacres” (the term “crimes against humanity” does not appear), but the point was not pursued in the final peace treaty done at Lausanne in 1923. See also COMM’N ON THE RESPONSIBILITY OF THE AUTHORS OF THE WAR AND ON ENFORCEMENT OF PENALTIES, MARCH 1919 REPORT PRESENTED TO PRELIMINARY PEACE CONFERENCE (1919) (recommending, over dissent of U.S. and Japanese members, criminal prosecution of those “guilty of offenses against the laws and customs of war or the laws of humanity”).

<sup>6</sup> The Hague Conventions applied to war between States, not to internal conflicts or massacres. The much later provisions of common article 3 of the 1949 Geneva Conventions and Protocol II of 1977 to those Conventions provide criminal proscriptions concerning noninternational armed conflict that will often overlap with crimes against humanity (and perhaps genocide). Particular depredations can often, in the modern expanded legal universe, be characterized legally in different ways. See generally José Doria, *Whether Crimes against Humanity Are Backdoor War Crimes*, in THE LEGAL REGIME OF THE INTERNATIONAL CRIMINAL COURT: ESSAYS IN HONOUR OF PROFESSOR IGOR BLISHCHENKO 645 (José Doria, Hans-Peter Gasser & M. Cherif Bassiouni eds., 2009).

<sup>7</sup> Convention (No. IV) respecting the Laws and Customs of War on Land, with Annex of Regulations, done at the Hague pmb., Oct. 18, 1907, 205 CONSOL. T.S. 277. Doria, *supra* note 6, at 646, attributes the origin “in the modern era” of the notion of crimes against humanity to the reference in the preamble to the Declaration of Saint Petersburg on fixing “technical limits within which the necessities of war ought to yield to the demands of humanity.” See Declaration Renouncing the Use, in Time of War, of Explosive Projectiles Under 400 Grammes Weight, Dec. 11, 1868, 138 CONSOL. T.S. 297, reprinted in 1 AM. J. INT’L L. 95 (Supp.1907) (adopted at Saint Petersburg by the International Military Commission). Once again, “war” at the relevant time denoted a reference to international armed conflict. This was not a matter of what leaders did to their own subjects.

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its terms only to “war” in the sense of international armed conflict, the Martens spirit certainly had some rhetorical power in the Armenian context.

In even earlier usage, “crime against humanity” had a narrower meaning, applying to the slave trade<sup>8</sup> and perhaps even slavery itself.<sup>9</sup>

I have summarized elsewhere<sup>10</sup> the process by which article 6(c) of the Nuremberg Charter was negotiated at the London Conference in 1945. That summary relied heavily on Justice Robert Jackson’s report to the U.S. President,<sup>11</sup> the nearest to an “official” account of what happened. I do not intend to repeat all that material here, but a few comments about the development of the final language will help illuminate the views the participants apparently had of the nature of the crimes with which they were concerned.

The first draft of what became article 6 of the Charter, presented by the United States to its allies at the San Francisco meeting at which the United Nations Charter was finalized, listed various acts that eventually fell under the rubric of crimes against peace and war crimes. It then added:

This declaration shall also include the right to charge and try defendants under this Agreement for violations of law other than those recited above, including but not limited to atrocities and crimes committed in violation of the domestic law of any Axis Power or satellite or any of the United Nations.<sup>12</sup>

What is interesting about this draft is that it contemplated trials applying what was explicitly domestic law, the domestic law both of Germany and that of those members of the Allies that had been affected by German depredations. In terms of jurisdictional theories, I take it that the Allies contemplated that, as the victorious powers following a surrender, they might exercise Germany’s “active personality” power to prosecute

<sup>8</sup> See Robert Lansing, *Notes on World Sovereignty*, 1 AM. J. INT’L L. 13, 25 (1921) (distinguishing between piracy, “a crime against the world” and the slave trade, “a crime against humanity”). (Although it was published in 1921, a note to this article suggests that it was written in 1906.) Lansing did not apparently have a broader view of the concept; he was one of the U.S. dissenters in 1919 to the legality of the proposal to try German leadership. In an unusual case in which he was justifying the extradition of a slave trader to Cuba, without the benefit of an extradition treaty, President Abraham Lincoln reported to the Senate that “a nation is never bound to furnish asylum to dangerous criminals who are offenders against the human race.” See discussion in 1 JOHN BASSETT MOORE, ON EXTRADITION AND INTERSTATE RENDITION 33–35 (1891). This must be an early example of a similar usage.

<sup>9</sup> See Jordan J. Paust, *Threats to Accountability after Nuremberg: Crimes against Humanity, Leader Responsibility and National Fora*, 12 N.Y.L. SCH. J. HUM. RTS. 545, 549 (1996) (quoting 1872 oration by George William Curtis). See also Letter from George Washington Williams to the U.S. Sec’y of State (1890), quoted in ADAM HOCHSCHILD, KING LEOPOLD’S GHOST: A STORY OF GREED, TERROR AND HEROISM IN COLONIAL AFRICA 112 (1999) (describing King Leopold’s rule in the Congo as a crime against humanity). William Schabas has also discovered an even earlier, but different, usage in French, with Robespierre’s reference to Louis XVI as a “criminel envers l’humanité.” WILLIAM A. SCHABAS, THE ABOLITION OF THE DEATH PENALTY IN INTERNATIONAL LAW 5 (2d ed. 1997).

<sup>10</sup> Clark, *Crimes against Humanity at Nuremberg*, *supra* note 1, at 181–92.

<sup>11</sup> REPORT OF ROBERT H. JACKSON, UNITED STATES REPRESENTATIVE TO THE INTERNATIONAL CONFERENCE ON MILITARY TRIALS (1947).

<sup>12</sup> *Id.* at 24.