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Edited by Leila Nadya Sadat  
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## FORGING A CONVENTION FOR CRIMES AGAINST HUMANITY

Crimes against humanity comprised one of the three categories of crimes elaborated in the Nuremberg Charter. However, unlike genocide and war crimes, they were never set out in a comprehensive international convention. This book represents an effort to complete the Nuremberg legacy by filling this gap. It contains a complete text of a Proposed Convention on crimes against humanity in English and in French, a comprehensive history of the Proposed Convention, and fifteen original papers written by leading experts on international criminal law. The papers contain reflections on various aspects of crimes against humanity, including gender crimes, universal jurisdiction, the history of codification efforts, the responsibility to protect, ethnic cleansing, peace and justice dilemmas, amnesties and immunities, the jurisprudence of the ad hoc tribunals, the definition of the crime in customary international law, the ICC definition, the architecture of international criminal justice, modes of criminal participation, crimes against humanity and terrorism, and the interstate enforcement regime.

Leila Nadya Sadat is the Henry H. Oerschelp Professor at Washington University School of Law and Director of the Whitney R. Harris World Law Institute. She is also the holder of the Alexis de Tocqueville Distinguished Fulbright Chair at the University of Cergy-Pontoise, in Paris, France, for spring 2011. A distinguished expert in international criminal law and human rights, Sadat is the Director of the Crimes Against Humanity Initiative, a three-year project to study the problem of crimes against humanity and draft a comprehensive convention addressing their punishment and prevention. A prolific scholar, Sadat is the author of *The International Criminal Court and the Transformation of International Law: Justice for the New Millennium*.

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Internationally renowned experts and Steering Committee members gathered at Washington University in St. Louis' historic Ridgley Hall for the April 2009 Meeting of the Crimes Against Humanity Initiative. Ridgley Hall was the site of the 1904 Inter-Parliamentary Union resolution that ultimately led to the convening of the 1907 Hague Peace Conference.

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# Forging a Convention for Crimes Against Humanity

*Edited by*

**LEILA NADYA SADAT**

School of Law, Washington University in St. Louis



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## Contents

<i>Figures and Maps</i>	page vii
<i>Crimes Against Humanity Initiative: Steering Committee</i>	viii
<i>Biographies of Contributors</i>	ix
<i>Foreword</i>	xvi
<i>Richard J. Goldstone</i>	
<i>Preface and Acknowledgments</i>	xix
<i>Leila Nadya Sadat</i>	
Crimes Against Humanity and the Responsibility to Protect <i>Gareth Evans, Keynote Address delivered June 11, 2009</i>	1
1. History of Efforts to Codify Crimes Against Humanity: From the Charter of Nuremberg to the Statute of Rome <i>Roger S. Clark</i>	8
2. The Universal Repression of Crimes Against Humanity before National Jurisdictions: The Need for a Treaty-Based Obligation to Prosecute <i>Payam Akhavan</i>	28
3. Revisiting the Architecture of Crimes Against Humanity: Almost a Century in the Making, with Gaps and Ambiguities Remaining – the Need for a Specialized Convention <i>M. Cherif Bassiouni</i>	43
4. The Bright Red Thread: The Politics of International Criminal Law – Do We Want Peace or Justice? The West African Experience <i>David M. Crane</i>	59
5. Gender-Based Crimes Against Humanity <i>Valerie Oosterveld</i>	78
6. “Chapeau Elements” of Crimes Against Humanity in the Jurisprudence of the UN Ad Hoc Tribunals <i>Göran Sluiter</i>	102

vi	<i>Contents</i>	
7.	The Definition of Crimes Against Humanity and the Question of a “Policy” Element <i>Guénaél Mettraux</i>	142
8.	Ethnic Cleansing as Euphemism, Metaphor, Criminology, and Law <i>John Hagan and Todd Haugh</i>	177
9.	Immunities and Amnesties <i>Diane Orentlicher</i>	202
10.	Modes of Participation <i>Elies van Sliedregt</i>	223
11.	Terrorism and Crimes Against Humanity <i>Michael P. Scharf and Michael A. Newton</i>	262
12.	Crimes Against Humanity and the International Criminal Court <i>Kai Ambos</i>	279
13.	Crimes Against Humanity and the Responsibility to Protect <i>David Scheffer</i>	305
14.	Re-enforcing Enforcement in a Specialized Convention on Crimes Against Humanity: Inter-State Cooperation, Mutual Legal Assistance, and the <i>Aut Dedere Aut Judicare</i> Obligation <i>Laura M. Olson</i>	323
15.	Why the World Needs an International Convention on Crimes Against Humanity <i>Gregory H. Stanton</i>	345
	<i>Appendices</i>	
I.	Proposed International Convention on the Prevention and Punishment of Crimes Against Humanity	359
II.	Proposition de Convention Internationale sur la Prévention et la Répression des crimes contre l’humanité	403
III.	A Comprehensive History of the Proposed International Convention on the Prevention and Punishment of Crimes Against Humanity <i>Leila Nadya Sadat</i>	449
	<i>Testimonials and Endorsements</i>	
1.	Washington Declaration on Crimes Against Humanity	533
2.	Kigali Declaration	542
3.	The Fourth Chautauqua Declaration: August 31, 2010	545
	<i>Index</i>	549

## Figures and Maps

### FIGURES

4.1. The West African Joint Criminal Enterprise.	<i>page 69</i>
8.1. Sudan-Darfur chain of command, 2003–2004.	188
8.2. Chronology of key events and monthly death estimates from survey and news counts of killings, January 2003–September 2004.	191
8.3. Combined roles of GoS and Janjaweed with ethnic protection in racial targeting of ethnic cleansing and mass atrocities in Darfur.	196
8.4. Cross-level interaction of separate and/or combined forces with settlement density on individual racial intent.	199
8.5. Cross-level interaction of collective racial intent with bombing on total victimization (standardized).	200

### MAPS

8.1. Settlement cluster map of racial epithets and total victimization and sexual victimization.	193
8.2. Janjaweed militia leaders' areas of operation.	198

Cambridge University Press  
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Frontmatter  
[More information](#)

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Crimes Against Humanity Initiative  
*Steering Committee*

Leila Nadya Sadat, Chair  
Henry H. Oerschelp Professor of Law  
Director, Whitney R. Harris World Law Institute  
Washington University School of Law

Professor M. Cherif Bassiouni  
DePaul University College of Law;  
President Emeritus, International  
Human Rights Law Institute;  
Distinguished Research  
Professor of Law Emeritus

Justice Richard J. Goldstone  
Former Chief Prosecutor, International  
Criminal Tribunals for the Former  
Yugoslavia and Rwanda

Professor William A. Schabas  
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Rights, National University of Ireland,  
Galway

Ambassador Hans Corell  
Former Under-Secretary-General for  
Legal Affairs and the Legal Counsel of  
the United Nations

Mr. Juan E. Méndez  
Visiting Professor, Washington College  
of Law, American University; Former  
Special Advisor to the Secretary-  
General of the UN on the Prevention  
of Genocide

Judge Christine Van den Wyngaert  
International Criminal Court

## Biographies of Contributors

### CRIMES AGAINST HUMANITY STEERING COMMITTEE MEMBERS

**M. Cherif Bassiouni** is a Distinguished Research Professor of Law *Emeritus*, and founder and President *Emeritus* of the International Human Rights Law Institute, DePaul University College of Law. Bassiouni has previously served as Member, then Chairman, of the Security Council's Commission to investigate war crimes in the former Yugoslavia (1992–1993); Commission on Human Rights' Independent Expert on The Rights to Restitution, Compensation and Rehabilitation for Victims of Grave Violations of Human Rights and Fundamental Freedoms (1998–2000); Vice-Chairman of the General Assembly's Ad Hoc Committee on the Establishment of an International Criminal Court (1995); and Chairman of the Drafting Committee of the 1998 Diplomatic Conference on the Establishment of an International Criminal Court.

In 1999, Bassiouni was nominated for the Nobel Peace Prize for his contributions to international criminal justice and the creation of the International Criminal Court. He has received numerous medals and awards for his service to the international community.

**Hans Corell** served as Under-Secretary-General for Legal Affairs and Legal Counsel of the United Nations from March 1994 to March 2004. He was the Secretary-General's representative at the Rome Conference on the Establishment of an International Criminal Court.

From 1962 to 1972, Corell served in the Swedish judiciary. In 1972, he joined the Ministry of Justice where he became Director of the Division for Administrative and Constitutional Law in 1979. In 1981, he was appointed Chief Legal Officer of the Ministry. He was Ambassador and Under-Secretary for Legal and Consular Affairs in the Foreign Ministry from 1984 to 1994.

In 2004 Corell retired from public service and is now engaged *inter alia* as legal adviser, lecturer, and member of different boards and committees, including in the International Bar Association. He is Chairman of the Board of Trustees of the Raoul Wallenberg Institute of Human Rights and Humanitarian Law at Lund University, Sweden.

**Richard J. Goldstone** was the first Chief Prosecutor of the International Criminal Tribunals for the former Yugoslavia and Rwanda. He has also served on the Constitutional Court of South Africa and the UN Independent International Committee that investigated the Iraq Oil for Food program (the Volcker Committee). Goldstone chaired the South African Commission of Inquiry Regarding the Prevention of Public Violence and Intimidation (the Goldstone Commission) and the International Independent Inquiry on Kosovo. In 2009 he led the United Nations Fact Finding Mission on Gaza.

In January 2008, Goldstone received the World Peace through Law Award from the Whitney R. Harris Institute. In May 2009, he also received the prestigious MacArthur Award for International Justice from the John D. and Catherine T. MacArthur Foundation. Goldstone is a foreign member of the American Academy of Arts and Sciences and an honorary member of the Association of the Bar of New York City.

**Juan E. Méndez** is Visiting Professor at the Washington College of Law, American University. From 2004 to 2009, Méndez was the President of the International Center for Transitional Justice. He also served as the executive director of the Inter-American Institute of Human Rights in Costa Rica (1996–1999) and as a member and President of the Inter-American Commission on Human Rights of the Organization of American States (2000–2003). From 2004 to 2007, Méndez was appointed the UN Special Adviser to the Secretary-General on the Prevention of Genocide.

Additionally, Méndez worked with Human Rights Watch for fifteen years, concentrating his efforts on human rights issues in the western hemisphere. In 1994, he became General Counsel of Human Rights Watch, in which capacity he was responsible for the organization's litigation and standard-setting activities.

On October 1, 2010, the UN Human Rights Council appointed Méndez the Special Rapporteur on Torture and CID Treatment or Punishment.

**Leila Nadya Sadat** is the Henry H. Oerschelp Professor at Washington University School of Law and Director of the Whitney R. Harris World Law Institute. She will be the Alexis de Tocqueville Distinguished Fulbright Chair at the University of Cergy-Pontoise in Paris, France, in spring 2011.

Sadat is an internationally recognized authority and prolific scholar. She is the author of the award-winning *The International Criminal Court and the Transformation of International Law: Justice for the New Millennium*. Her most recent articles include: "A Rawlsian Approach to International Criminal Justice," "On the Shores of Lake Victoria: Africa and the International Criminal Court," "Understanding the Complexities of International Criminal Tribunal Jurisdiction," and "The Nuremberg Paradox."

Sadat was a delegate to the 1998 Rome Diplomatic Conference and the 2010 ICC Review Conference in Kampala, Uganda. She has held leadership positions in many organizations and is a member of the American Law Institute.

**William A. Schabas** is the Director of the Irish Centre for Human Rights and the Chair in human rights law at the National University of Ireland, Galway. He has published extensively on international human rights law, and his work has been cited by many of the world's national and international courts, including the U.S. Supreme Court, the Judicial Committee of the Privy Council, the International Court of Justice, and the European Court of Human Rights. Schabas currently holds the Vespasian V. Pella Medal for International Criminal Justice of the Association Internationale de Droit Penal.

Schabas has participated in international human rights missions on behalf of non-governmental organizations, and from 2002 to 2004 he served on the Sierra Leone Truth and Reconciliation Commission. He was also an NGO delegate to the Rome Conference on the Establishment of an International Criminal Court in July 1998 and the Kampala Review Conference in June 2010.

**Christine Van den Wyngaert** is a specialist in international criminal law, criminal procedure, and comparative criminal law. In January 2009, she was elected a judge on the International Criminal Court. Van den Wyngaert has also served as a judge at the International Criminal Tribunal for the former Yugoslavia and a judge ad hoc at the International Court of Justice in the Arrest Warrant case (2000–2002).

As a professor at the University of Antwerp, a researcher, and the author of many books, Van den Wyngaert has made a considerable contribution to the development of international criminal law. She was also a rapporteur for the International Law Association on extradition and human rights and a general reporter for the Association Internationale de Droit Pénal in Budapest relating to international cooperation to combat organized crime. Van den Wyngaert has been awarded doctorates honoris causa by the University of Uppsala (2001) and the University of Brussels (2009).

## OTHER CONTRIBUTORS

**Payam Akhavan** is a Professor of International Law at McGill University and formerly Senior Fellow at Yale Law School. He was the first Legal Advisor to the Office of the Prosecutor at the International Criminal Tribunals for the former Yugoslavia and Rwanda. Akhavan has also served as counsel before the International Court of Justice and other tribunals. He is cofounder of the Iran Human Rights Documentation Centre. His essay “Beyond Impunity: Can International Criminal Justice Prevent Future Atrocities?” was selected by the International Library of Law and Legal Theory as one of “the most significant published journal essays in contemporary legal studies.”

**Kai Ambos** is a Professor of Criminal Law, Criminal Procedure, Comparative Law, and International Criminal Law at the University of Göttingen, Germany. He is the author and editor of numerous publications on German and international

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**Roger S. Clark** is a Board of Governors Professor at Rutgers School of Law-Camden. He served as a member of the UN Committee on Crime Prevention and Control between 1987 and 1990. In 1995 and 1996, he represented the government of Samoa in arguing the illegality of nuclear weapons before the International Court of Justice. Since 1995, he has represented Samoa in negotiations to create the International Criminal Court and to enable it to exercise its jurisdiction over the crime of aggression. Clark has written widely on issues of human rights, decolonization, international organization, and international criminal law.

**David M. Crane** is a Professor of Practice at Syracuse University College of Law. From 2002 to 2005, he was the founding Chief Prosecutor of the Special Court for Sierra Leone, thus becoming the first American chief prosecutor of an international war crimes tribunal since Justice Robert Jackson and Telford Taylor in 1945. Prior to his departure from West Africa, Crane was made an honorary Paramount Chief by the Civil Society Organizations of Sierra Leone. Crane has more than three decades of public service experience in the U.S. federal government. In 2006, he founded Impunity Watch (<http://www.impunitywatch.com>), a law review and public service blog.

**Gareth Evans** is the Chancellor of Australian National University, Professorial Fellow at the University of Melbourne, and President Emeritus of the International Crisis Group, which he headed from 2000 to 2009. He was a member of the Australian Parliament for twenty-one years and a cabinet minister for thirteen years, including as Foreign Minister from 1988 to 1996. He cochaired the International Commissions on Nuclear Non-Proliferation and Disarmament (2008–2010) and on Intervention and State Sovereignty (2000–2001), which initiated the “responsibility to protect” concept. Evans has written and edited nine books, including *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and for All* (Brookings Institution Press, 2008).

**John Hagan** is the John D. MacArthur Professor of Sociology and Law at Northwestern University and Codirector of the Center on Law & Globalization at the American Bar Foundation in Chicago. He received the Stockholm Prize in Criminology in 2009. Hagan is the editor of the *Annual Review of Law & Social Science*. He is the coauthor, with Wenona Rymond-Richmond, of *Darfur and the Crime of Genocide* (Cambridge University Press, 2009), which received the Albert J. Reiss Distinguished Publication Award and the Michael J. Hindelang Book Award.

**Todd Haugh** is an Instructor of Legal Writing at DePaul University College of Law. Haugh's scholarship focuses on issues related to sentencing, criminal procedure, and international criminal law. While in private practice, Haugh focused on white-collar criminal defense and commercial litigation at Winston & Strawn, LLP and Stetler & Duffy, Ltd. He also served as a law clerk to the Hon. Suzanne B. Conlon, Senior District Judge for the Northern District of Illinois. Haugh received a BA with honors in political science from Brown University and a JD, *cum laude*, from the University of Illinois College of Law.

**Guénaél Mettraux** appears as defense counsel before international and internationalized criminal jurisdictions. He is a guest professor in a number of universities and has published extensively in international law, including three books published by Oxford University Press. His latest book, *The Law of Command Responsibility* (Oxford University Press, 2009), won the Lieber Prize for 2009 book of the year from the Lieber Society of the American Society of International Law.

**Michael A. Newton** is a Professor of the Practice of Law at Vanderbilt University Law School. He is an expert on accountability and conduct of hostilities issues, having helped negotiate the Elements of Crimes for the International Criminal Court. As the Senior Advisor to the Ambassador-at-Large for War Crimes Issues, U.S. Department of State, Newton coordinated U.S. support of accountability mechanisms worldwide. Newton served as Professor of International and Operational Law at the Judge Advocate General's School and later taught at West Point. He currently serves as senior editor of the *Terrorism International Case Law Reporter* series published annually by Oxford University Press.

**Laura M. Olson** currently serves as a Supervisory Program Analyst in the U.S. Department of Homeland Security's Office of Civil Rights and Civil Liberties. Olson's chapter in this volume was completed prior to her government appointment, and the views expressed herein do not represent those of the U.S. Department of Homeland Security or the U.S. government. She served for ten years as Legal Advisor to the International Committee of the Red Cross (ICRC). Her writing covers matters of international humanitarian law, transitional justice, and the relationship between international humanitarian and human rights law during armed conflict.

**Valerie Oosterveld** is an Assistant Professor of Law at the University of Western Ontario. Previously, she served in the Legal Affairs Bureau of Canada's Department of Foreign Affairs and International Trade, where she provided legal advice on issues of genocide, crimes against humanity, and war crimes, especially with respect to the International Criminal Court, the International Criminal Tribunals for the former Yugoslavia and Rwanda, and the Special Court for Sierra Leone. Oosterveld was a member of the Canadian delegation to the International Criminal Court negotiations and subsequent Assembly of States Parties. She has published extensively on gender issues in international criminal law.

**Diane Orentlicher** is a Professor of International Law and Codirector of the Center for Human Rights and Humanitarian Law at Washington College of Law, American University (currently on leave). In 2009, Orentlicher was appointed to serve in the Obama administration as Deputy, Office of War Crimes Issues, Department of State. Orentlicher's contribution to this volume was completed before she became an employee of the U.S. Department of State. The views set forth in her chapter do not necessarily reflect those of the U.S. Department of State or the U.S. government.

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**David Scheffer** is the Mayer Brown/Robert A. Helman Professor of Law and Director of the Center for International Human Rights at Northwestern University School of Law. He served as the U.S. Ambassador-at-Large for War Crimes Issues during the second Clinton administration and as Senior Adviser and Counsel to the U.S. Permanent Representative to the United Nations from 1993 to 1996. Scheffer led the U.S. delegation in the UN talks creating the International Criminal Court and helped negotiate the establishment of the International Criminal Tribunals for the former Yugoslavia and Rwanda, the Special Court for Sierra Leone, and the Extraordinary Chambers in Cambodia.

**Göran Sluiter** is a Professor of International Criminal Law, in particular the Law of International Criminal Procedure, at the University of Amsterdam and a lawyer at Böhler Advocaten, a law firm in Amsterdam specializing in international criminal law, with cases at the Khmer Rouge Tribunal and the ICC, among others. In his research, Sluiter focuses on determining general doctrines within the framework of international law of criminal procedure, which could form the basis of improved procedural law. He is member of the editorial board of *International Criminal Law Review* and of the editorial committee of the *Journal of International Criminal Justice*.

**Gregory H. Stanton** is the Research Professor in Genocide Studies and Prevention at the Institute for Conflict Analysis and Resolution of George Mason University and the President of Genocide Watch. He founded the Cambodian Genocide Project in 1982 and drafted the rules for the Khmer Rouge Tribunal. Stanton also founded the International Campaign to End Genocide in 1999. From 2007 to 2009 he was president of the International Association of Genocide Scholars. Stanton served in the

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Frontmatter  
[More information](#)

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*Biographies of Contributors*

xv

State Department from 1992 to 1999, where he drafted the United Nations Security Council Resolutions that created the International Criminal Tribunal for Rwanda.

**Elies van Sliedregt** is a Professor of Criminal Law at VU University Amsterdam. She is a member of the editorial board of the *Leiden Journal of International Law* and president of the International Criminal Law Network. In 2006, van Sliedregt was awarded the Modderman Prize, the highest scientific distinction in the field of criminal law in The Netherlands. Van Sliedregt is a member of The Young Academy of The Royal Netherlands Academy of Arts and Sciences. Her research interests lie in the field of international, European, and comparative criminal law.

## Foreword

Richard J. Goldstone

It is appropriate at the outset to pay warm tribute to Whitney Harris who played a key role in establishing the initiative on a Convention for Crimes Against Humanity. Whitney was one of the leading prosecutors at Nuremberg and worked closely with U.S. Chief Prosecutor Justice Robert Jackson. It was my distinct privilege to have met Whitney in Nuremberg and hear him deliver the opening address in 1995 at a seminar to mark the fiftieth anniversary of the Nuremberg Trials against the major Nazi leaders. His voice resonated in the very courtroom where that trial was held, as the immortal words of Justice Robert Jackson took on a new and urgent meaning.

The Whitney R. Harris World Law Institute at Washington University in St. Louis functions as a center for instruction and research in international and comparative law. It is the home of the project. Those of us involved with the project rejoiced in having the support and advice of Whitney and we are sad that he passed away before the completion of the project. We console ourselves with the knowledge of how much a Convention on Crimes Against Humanity meant to him and how much satisfaction he received from it. His warmth and moving words will always be associated with it. He attended the opening conference in St. Louis, and a video-taped message watched at the final conference, shortly before his death, will always remain with us.

The idea and inspiration for the project came from Professor Leila Nadya Sadat, the Henry H. Oerschelp Professor of Law and Director of the Harris World Law Institute at Washington University in St. Louis. A recognized academic leader in the field of international law, she became aware of an important vacuum in international humanitarian law. While there is a convention dealing with genocide, and the Geneva Conventions deal with serious war crimes, there is no convention that covers crimes against humanity. The absence of the latter has negative implications for the growing international recognition of the need to withdraw impunity for war criminals. The absence of such a convention came to the fore in the case before the International Court of Justice in which Bosnia and Herzegovina brought an action against Serbia under the jurisdiction conferred on that Court by the Genocide Convention.<sup>1</sup> Bosnia sought a declaration that genocide had been committed in its territory during the wars of the early 1990s, and it also claimed compensation. The Court recognized the many serious violations of the laws of armed conflict

<sup>1</sup> International Convention on the Prevention and Punishment of Genocide, *adopted* Dec. 9, 1948, 78 U.N.T.S. 277.

committed by Bosnian Serb troops. It also recognized that Serbia was either responsible for some of those crimes or could, at least, have taken steps to prevent them. More particularly, the Court found that crimes against humanity had been perpetrated. However, because the jurisdiction of the Court was limited to genocide, these other crimes were not before them and they slipped off the table. Genocide was held to have been proven only in the massacre of some 8,000 Muslim men and boys in Srebrenica in July 1995. What was missing was a convention on crimes against humanity that would have given the International Court of Justice jurisdiction not only in respect of the crime of genocide, but crimes against humanity as well.

Leila Sadat decided to launch this project and applied her customary efficiency and infectious enthusiasm to it. She set up a steering committee under her leadership, and I was delighted and honored to be one of its six members together with Professor M. Cherif Bassiouni (also appointed to lead the drafting of the convention), Dr. Hans Corell, the former Legal Counsel of the United Nations; Juan E. Méndez, President Emeritus of the International Center for Transitional Justice; Professor William A. Schabas, the Director of the Human Rights Center of the National University of Ireland at Galway; and Judge Christine Van den Wyngaert, a judge of the International Criminal Court.

From its very first meeting, the members of the Steering Committee agreed that the project and the proposed convention should in no way be prejudicial to the International Criminal Court or contradictory to the provisions of the Rome Treaty. The *Proposed Convention* that has now been drafted reflects that concern and agreement. In particular, after many discussions and much consideration, the definition of “crimes against humanity” that appears in the Convention is identical to that found in the Rome Treaty. Consideration was also devoted to whether an optional protocol might be preferred rather than a convention. For a number of reasons, a convention was the route followed. One of the decisive considerations was that a convention would contain important provisions directed toward the prevention of crimes against humanity and not only their prosecution after they had been committed. Another is that non–States Parties to the Rome Treaty would be able to ratify a convention whereas an optional protocol would be open to ratification only by States Parties.

Again, on the Initiative of Leila Sadat, three outstanding conferences were held at which papers relevant to the *Proposed Convention* were convened – in St. Louis, The Hague, and Washington, D.C. Some of those papers appear in this book.

I would suggest that the need for a convention on crimes against humanity is an obvious one. Not only will it fill a vacuum in international humanitarian law, but it would enable States and international organizations to adopt appropriate measures aimed at preventing serious crimes against civilian populations. Again, it would be another positive step toward the withdrawal of impunity from war criminals. It would also encourage States to place themselves in a position to exercise their right of complementarity and investigate alleged crimes against their nationals in preference to having the International Criminal Court do so.

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Frontmatter  
[More information](#)

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xviii

*Foreword*

It remains for me to express the hope that the recognition of the need for a convention on crimes against humanity will gain political traction. States need to ratify it and speedily introduce domestic legislation to give effect to its provisions.

I warmly congratulate Leila Sadat for having initiated and brought this project to a successful conclusion.

## Preface and Acknowledgments

Leila Nadya Sadat

This book represents the culmination of more than one hundred years of effort in the development of international criminal law. With extraordinary support and input from nearly 250 noted experts from around the world, a complete *Proposed International Convention on the Prevention and Punishment of Crimes Against Humanity* has finally been elaborated. It is my sincere hope that the *Proposed Convention*, along with the collected scholarly articles and drafting history set forth herein, will serve as a foundation for the consideration – and ultimate adoption by States – of a crimes against humanity convention, a still-missing and essential piece of the framework of international humanitarian and international criminal law.

During the trials of the German and Japanese leaders by the Allies following World War II, crimes against humanity emerged as an independent basis of individual criminal liability in international law. Although the so-called Martens Clause of the 1907 *Hague Convention Respecting the Laws and Customs of War on Land* referenced the “laws of humanity, and ... the dictates of the public conscience” as protections available under the law of nations to human beings caught in the ravages of war, this language was too uncertain to provide a clear basis for either State responsibility or criminal liability under international law.<sup>1</sup> Subsequently, crimes against humanity were specifically included in the Charters of the International Military Tribunals at Nuremberg<sup>2</sup> and Tokyo<sup>3</sup> to address depredations directed against civilian populations by the State – including the State of the victims’ nationality. Indeed, it was in many ways the most revolutionary of the charges upon which the accused were convicted, for its foundations in international law were so fragile.<sup>4</sup> Following the trials, the Nuremberg Principles embodied in the IMT Charter and Judgment were adopted by the General Assembly in 1946<sup>5</sup> and

<sup>1</sup> See, e.g., Leila Sadat, *The Interpretation of the Nuremberg Principles by the French Court of Cassation: From Touvier to Barbie and Back Again*, 32 COLUM. J. TRANSNAT’L. L. 289, 296–300 (1994).

<sup>2</sup> Charter of the International Military Tribunal – Annex to the Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, Aug. 8, 1945, 58 Stat. 1544, 82 U.N.T.S. 280.

<sup>3</sup> Charter of the International Military Tribunal for the Far East, Jan. 19, 1946, amended Apr. 26, 1946, T.I.A.S. No. 1589, 4 BEVANS 20.

<sup>4</sup> The other was the crime of waging an aggressive war.

<sup>5</sup> *Affirmation of the Principles of International Law Recognized by the Charter of the Nuremberg Tribunal: Report of the Sixth Committee*, U.N. GAOR, 1st Sess., pt. 2, 55th plen. mtg. at 1144, U.N. Doc. A/236 (1946) (also appears as G.A. Res. 95, U.N. Doc. A/64/Add.1, at 188 (1946).

codified by the International Law Commission in 1950.<sup>6</sup> Thus, “crimes against humanity,” whatever their uncertain legal origin, had apparently found a firm place in international law as a category of offenses condemned by international law for which individuals could be tried and punished. The codification of the crime of genocide – itself a crime against humanity – lent some truth to this assumption; however, the important achievement of the Genocide Convention’s adoption and entry into force in 1951<sup>7</sup> was overshadowed by Cold War politics. Indeed, no trials for genocide took place until 1998, when Jean-Paul Akayesu, mayor (*bourgmestre*) of the town of Taba, was convicted by the International Criminal Tribunal for Rwanda (ICTR) for his role in the slaughter that had engulfed Rwanda in 1994.<sup>8</sup> Crimes against humanity percolated in the legal systems of a handful of countries that had domesticated the crime, such as France, and certain elements of their prohibition could be found in new international instruments prohibiting torture and apartheid.<sup>9</sup> Scholarly articles periodically appeared as well. But the promise of “never again,” as many have observed before me, was repeatedly dishonored as the mass atrocities committed in the second half of the twentieth century unfolded before the eyes of the world, bloody in their carnage and the human toll they exacted, and shocking in their cruelty and barbarism.<sup>10</sup> There was little accountability of any kind exacted from those responsible for these crimes against humanity – *ces crimes contre l’esprit* – whether committed by government officials or military leaders, rebels, insurgents, or low-level perpetrators. The Nuremberg promise remained unfulfilled.<sup>11</sup>

<sup>6</sup> Documents of the second session, including the report of the Commission to the General Assembly, [1950] 2 Y.B. Int’l L. Comm’n 374, U.N. Doc. A/CN.4.SER.A/1950/Add.1.

<sup>7</sup> Convention on the Prevention and Punishment of the Crime of Genocide, G.A. Res. 260 (III) A, 78 U.N.T.S. 277, *entry into force* Jan. 12, 1951 (Dec. 9, 1948) [hereinafter Genocide Convention].

<sup>8</sup> Prosecutor v. Akayesu, Case No. ICTR-96-4-T, Judgment, ¶ 494 (Sept. 2, 1998).

<sup>9</sup> See International Convention on the Suppression and Punishment of the Crime of Apartheid, G.A. Res. 3068, U.N. Doc. A/RES/3068 (July 18, 1976); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, U.N. Doc. A/Res/39/46 (Dec. 10, 1984); Organization of American States, Inter-American Convention to Prevent and Punish Torture, Feb. 28, 1987, O.A.S.T.S. No. 67; Council of Europe, European Convention for the Punishment of Torture and Inhuman or Degrading Treatment of Punishment, Feb. 1, 1989, E.T.S. 126.

<sup>10</sup> One recent study has suggested that between 1945 and 2008, between 92 million and 101 million persons were killed in 313 different conflicts, the majority of whom were civilians. In addition to those killed directly in these events, others have died as a consequence, or had their lives shattered in other ways – through the loss of property; through victimization by sexual violence; through disappearances, slavery and slavery-related practices, deportations and forced displacements, and torture. M. Cherif Bassiouni, *Assessing Conflict Outcomes: Accountability and Impunity*, in *THE PURSUIT OF INTERNATIONAL CRIMINAL JUSTICE: A WORLD STUDY ON CONFLICTS, VICTIMIZATION, AND POST-CONFLICT JUSTICE* 6 (M. Cherif Bassiouni ed., 2010).

<sup>11</sup> In 1989, the Cold War ended with the fall of the Berlin Wall, and this began to change. The International Criminal Court project, which had lain fallow, was restarted with the introduction of a resolution into the General Assembly by Trinidad and Tobago, leading a coalition of sixteen Caribbean nations, and work on the Draft Code of Crimes continued at the International Law

One of the most horrific examples of post–World War II crimes against humanity was the Cambodian “genocide” discussed by Gareth Evans in this volume. From 1975 to 1979, the Khmer Rouge regime killed an estimated 1.7 million–2.5 million Cambodians, out of a total population of 7 million.<sup>12</sup> Although now popularly referred to as a “genocide,” legally that is a difficult case to make. Indeed, there has been a great deal of criticism and worry generated by the decision of the co-prosecutors of the Extraordinary Chambers for Cambodia to bring charges of genocide against several former high-ranking leaders of the Khmer Rouge regime, for fear that the charges will not be legally possible to prove.<sup>13</sup> For the most part, individuals were killed, tortured, starved, or worked to death by the Khmer Rouge not because of their appurtenance to a particular racial, ethnic, religious, or national group – the four categories to which the Genocide Convention applies – but because of their political or social classes, or the fact that they could be identified as intellectuals.<sup>14</sup> While theories have been advanced suggesting ways that the Genocide Convention applied to these atrocities,<sup>15</sup> and an argument can certainly be made that some groups were exterminated *qua* groups (such as Buddhist monks, whose numbers were reportedly reduced from 60,000 to 1,000),<sup>16</sup> most experts agree with Evans’ chilling assessment that:

[F]or 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 ... the necessary elements of specific intent required for its application were simply not there.<sup>17</sup>

Once again, the international community had failed both to prevent the commission of mass atrocities and to provide the legal tools necessary to react to their

Commission. See *Report of the Commission to the General Assembly on the work of its forty-eighth session*, [1996] 2 Y.B. Int’l L. Comm’n 15–42, U.N. Doc. A/CN.4/SER.A/1996/Add.1; see also LEILA NADYA SADAT, *THE INTERNATIONAL CRIMINAL COURT AND THE TRANSFORMATION OF INTERNATIONAL LAW: JUSTICE FOR THE NEW MILLENNIUM* (2002).

<sup>12</sup> See generally Craig Etcheson, *After the Killing Fields: Lessons from the Cambodian Genocide* 118–20 (2005).

<sup>13</sup> Order on Request for Investigative Action on the Applicability of the Crime of Genocide at the ECCC, 002/19–09–2007-ECCC-OCIJ, Dec. 28, 2009; see Peter Maguire, Op-Ed., *Cambodia’s Troubled Tribunal*, N.Y. TIMES, July 28, 2010, available at <http://www.nytimes.com/2010/07/29/opinion/29iht-edmaguire.html>; see also William A. Schabas, *Problems of International Codification – Were the Atrocities in Cambodia and Kosovo Genocide?* 35 NEW ENG. L. REV. 287 (2001).

<sup>14</sup> See SAMANTHA POWER, “A PROBLEM FROM HELL”: AMERICA AND THE AGE OF GENOCIDE 87–154 (2002).

<sup>15</sup> Hurst Hannum, *International Law and Cambodian Genocide: The Sounds of Silence*, 11 HUM. RTS. Q. 82 (1989) (describing the mass atrocities in Cambodia as an “auto genocide”).

<sup>16</sup> POWER, *supra* note 14, at 143.

<sup>17</sup> Gareth Evans, *Crimes Against Humanity and the Responsibility to Protect*, in this volume, at 3.

occurrence.<sup>18</sup> As war broke out in the former Yugoslavia, and the Rwandan genocide took place with the world watching in horror, the international community reached for the Nuremberg precedent only to find that it had failed to finish it. This made the task of using law as an antidote to barbarism a difficult and complex endeavor. The uncertainty in the law was evidenced by the texts of the Statutes for the International Criminal Tribunals for the former Yugoslavia (ICTY) and Rwanda (ICTR), which contained different and arguably contradictory definitions of crimes against humanity, a notion difficult to square with the idea of universal international crimes.<sup>19</sup> M. Cherif Bassiouni underscored this problem in an important, but little noticed, article appearing in 1994 entitled “‘Crimes Against Humanity’: The Need for a Specialized Convention,” in which he lamented the “existence of a significant gap in the international normative proscriptive scheme, one which is regrettably met by political decision makers with shocking complacency.”<sup>20</sup>

With the adoption of the International Criminal Court (ICC) Statute in 1998, crimes against humanity were finally defined and ensconced in an international convention. The ICC definition is similar to earlier versions but differs in important respects, such as the requirement that crimes against humanity be committed “pursuant to a State or organizational policy.”<sup>21</sup> However, it was a convention that *by its own terms* did not purport to represent customary law, but only law defined for the purposes of the Statute itself.<sup>22</sup> (Whether it has *subsequently* come to represent customary international law was debated during the course of this Initiative).<sup>23</sup> Moreover, even if the ICC definition ultimately represents customary international law, it applies only to cases to be tried before the ICC. Although presumably ICC Party States can and will adopt the ICC definition as domestic law (and are encouraged to do so pursuant to the principle of complementarity), the ICC Statute provides no vehicle for inter-State cooperation. Putting it more simply, the adoption of the Rome Statute advanced the normative work of defining crimes against humanity considerably but did not obviate the need to fill the *lacunae* in the legal framework as regards the commission of atrocity crimes, most of which are crimes against

<sup>18</sup> The international community eventually negotiated an agreement with the Cambodian government to establish a court known as the Extraordinary Chambers in the Courts of Cambodia for the trial of a handful of former Khmer Rouge leaders in 2003. Agreements between the United Nations and The Royal Government of Cambodia Concerning the Prosecution Under Cambodian Law of Crimes Committed during the Period of Democratic Kampuchea, U.N.-Cambodia, June 6, 2003, 43 U.N.T.S. 2329.

<sup>19</sup> The Statute for the IMT at Tokyo and Control Council Law No. 10, *supra* notes 2 and 3, also differed slightly from the Nuremberg definition.

<sup>20</sup> M. Cherif Bassiouni, “‘Crimes Against Humanity’: The Need for a Specialized Convention,” 31 COLUM. J. TRANSNAT’L. L. 457 (1994).

<sup>21</sup> Rome Statute of the International Criminal Court art. 7(2)(a), July 17, 1998, U.N. Doc. A/CONF.183/9 [hereinafter ICC Statute].

<sup>22</sup> See, e.g., ICC Statute, art. 7(1) (“for the purpose of this Statute, ‘crime against humanity’ means . . .”).

<sup>23</sup> See Guénaél Mettraux, *The Definition of Crimes Against Humanity and the Question of a “Policy” Element*, in this volume; Kai Ambos, *Crimes Against Humanity and the International Criminal Court*, in this volume.

humanity, and not genocide, and many of which are crimes against humanity, and not war crimes. As the ad hoc tribunals begin to close down, shoring up the capacity for national legal systems to pick up cases involving crimes against humanity appears imperative if the small gains achieved during the past two decades of international criminal justice are not to be reversed. This is particularly true as regards crimes against humanity, for recent experience demonstrates that crimes against humanity have been committed and charged in all situations currently under examination before the international criminal tribunals (and the ICC) to date.

As Richard J. Goldstone notes in the *Foreword* to this volume, the case of *Bosnia v. Serbia* before the International Court of Justice<sup>24</sup> again evidenced the difficulty this normative gap engenders. For the debate in that case, centering upon whether the mass atrocities in Bosnia committed during the 1990s constituted genocide, missed the point. Although the Court recognized that many serious violations of the laws of armed conflict and crimes against humanity had been committed by Bosnian Serb troops, because the Court's jurisdiction was limited to genocide,<sup>25</sup> these other crimes were not before them, and they "slipped off the table."<sup>26</sup> Of the nearly 200,000 deaths, 50,000 rapes estimated to have occurred, and the 2.2 million forcibly displaced as a result of the Serb ethnic cleansing campaign,<sup>27</sup> genocide was held to have been proven only in the massacre of some 8,000 Muslim men and boys in Srebrenica in July 1995.<sup>28</sup> What was missing was a convention on crimes against humanity that would have given the International Court of Justice jurisdiction not only in respect of the crime of genocide but for crimes against humanity as well.<sup>29</sup>

Thus, in 2008, the Whitney R. Harris World Law Institute, under my direction, launched the Crimes Against Humanity Initiative. As the *Comprehensive History* to the *Proposed Convention* explains,<sup>30</sup> the Initiative had three primary objectives: (1) to study the current state of the law and sociological reality as regards the commission of crimes against humanity; (2) to combat the indifference generated by an

<sup>24</sup> Richard J. Goldstone, *Foreword*, in this volume.

<sup>25</sup> Genocide Convention, *supra* note 7, art. IX.

<sup>26</sup> Goldstone, *supra* note 24, at xviii.

<sup>27</sup> These numbers are estimates of the number of deaths, rapes, and forcibly displaced as a result of the armed conflict in Bosnia. AMNESTY INTERNATIONAL, *THE WOMEN OF BOSNIA AND HERZEGOVINA ARE STILL WAITING* 5, nn. 9, 14 & 15 (2009). Some critics claim that these numbers are overestimates and have been politicized. *See, e.g., id.*

<sup>28</sup> Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Serb. & Mont.), 2007 I.C.J. 91, ¶ 297 (Feb. 26, 2007). In its recent June 2010 judgment, the ICTY found that there is enough DNA evidence to identify at least 5,336 individuals, but evidence continues to be discovered so the numbers could be as high as 7,826. Prosecutor v. Popović, Case No. IT-05-88-T, Judgment, ¶ 664 (June 10, 2010).

<sup>29</sup> Article 26 of the *Proposed Convention* does this. *See* Proposed International Convention on the Prevention and Punishment of Crimes Against Humanity, in this volume. Of course, the same can be said for the actions brought to the Court by Croatia and Serbia as well. *See* Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia), 2008 I.C.J. 118 (Nov. 18, 2008).

<sup>30</sup> Leila Nadya Sadat, *A Comprehensive History of the Proposed International Convention on the Prevention and Punishment of Crimes Against Humanity*, in this volume, App. III.

assessment that a particular crime is “only” a crime against humanity (rather than a “genocide”); and (3) to address the gap in the current law by elaborating the first-ever comprehensive specialized convention on crimes against humanity.

The Initiative has progressed in phases, each building upon the work of the last. The publication of this volume, including the papers herein and the *Proposed Convention*, represents the culmination of the first three phases of the Initiative: (I) *preparation* of the project and methodological development; (II) *private study* of the project through the commissioning of the papers in this volume, the convening of expert meetings, and collaborative discussion of draft treaty language; and (III) *public discussion* of the project with relevant constituencies and the publication of the *Proposed Convention*. Ambitious in scope and conceptual design, the project is directed by a Steering Committee of renowned experts and has drawn on the Harris Institute’s connections, particularly overseas, to assemble a truly extraordinary international effort on the elaboration of a proposed convention on crimes against humanity.

During Phase II, the papers in this collection, written by leading experts, were presented and discussed at a conference held at the Washington University School of Law on April 13–14, 2009. They were then revised for publication.<sup>31</sup> They address the legal regulation of crimes against humanity and examine the broader social and historical context within which they occur. Each chapter was commissioned not only to examine the topic’s relationship to the elaboration of a future treaty, but to serve as an important contribution to the literature on crimes against humanity in and of itself.

Each of the fifteen papers in this collection is a gem. The papers range from technical discussions of specific legal issues such as modes of responsibility (van Sliedregt), immunities and amnesties (Orentlicher), enforcement (Olson), and gender crimes (Oosterveld) to broader conceptual treatments of earlier codification efforts (Clark), the definition of the crime in the Rome Statute and customary international law (Ambos and Mettraux), and the phenomenon of ethnic cleansing (Hagan & Haugh). Several of the papers contrast the ICC and ad hoc tribunal definition of crimes against humanity and were very helpful to the discussions as the drafting effort progressed (see, e.g., Sluiter); the same can be said for the many other contributions to the volume, which addressed specific topics such as crimes against humanity and terrorism (Scharf & Newton), universal jurisdiction (Akhavan), and the Responsibility to Protect (Scheffer). David M. Crane’s contribution outlining “Operation Justice” in Sierra Leone is an outstanding case study of “peace and justice” in action; likewise, M. Cherif Bassiouni’s exposé on “revisiting the architecture of crimes against humanity” is a magisterial account of the crime’s development during the past century.

<sup>31</sup> One paper, on *Re-enforcing Enforcement*, was commissioned subsequent to the April meeting based upon the emphasis in that meeting on inter-State cooperation as a principal need for the Convention. Laura M. Olson, *Re-enforcing Enforcement in a Specialized Convention on Crimes Against Humanity: Inter-State Cooperation, Mutual Legal Assistance, and the Aut Dedere Aut Judicare Obligation*, in this volume.

In discussing the scholarly work, more questions were raised than answered. What was the social harm any convention would protect? Atrocities committed by the State, or a broader concept that would include non-State actors? Would a new legal instrument prove useful in combating atrocity crimes? How would any new instrument interact with the Rome Statute for the International Criminal Court? The lengthy discussions that transpired are memorialized in the *Comprehensive History* found in Appendix III and will no doubt continue after this book has been published, but it should be emphasized that the discussion and elaboration of the Convention's provisions are deeply intertwined with the academic work accomplished at the same time.

As the initial scholarly work was undertaken, a preliminary draft text of the convention, prepared by Cherif Bassiouni, was circulated to participants of the April meeting to begin the drafting process. As the Initiative progressed, nearly 250 experts were consulted, many of whom submitted detailed comments (orally or in writing) on the various drafts of the proposed convention circulated or attended meetings convened by the Initiative either in the United States or abroad. Between formal meetings, technical advisory sessions were held during which every comment received – whether in writing or communicated verbally – was discussed as the Convention was refined. The *Proposed Convention* went through seven major revisions (and innumerable minor ones) and was approved by the members of the Steering Committee as it now appears in Appendices I (in English) and II (in French) in this volume. The *Comprehensive History* appearing in Appendix III describes the drafting process as well as the debates that surfaced during the *Proposed Convention's* elaboration in detail.

The *Proposed Convention*, we hope, will begin, not end, debate. Elaborated by experts without the constraints of government instructions (although deeply cognizant of political realities), it is, we believe, an excellent platform for discussion by States with a view toward the eventual adoption of a United Nations Convention on the Prevention and Punishment of Crimes Against Humanity. The *Proposed Convention* builds upon and complements the ICC Statute by retaining the Rome Statute definition of crimes against humanity but has added robust interstate cooperation, extradition, and mutual legal assistance provisions in Annexes 2–6. Universal jurisdiction was retained (but is not mandatory), and the Rome Statute served as a model for several additional provisions, including Articles 4–7 (Responsibility, Official Capacity, Non-Applicability of Statute of Limitations) and with respect to final clauses. Other provisions draw on international criminal law and human rights instruments more broadly, such as the recently negotiated Enforced Disappearance Convention, the Terrorist Bombing Convention, the Convention Against Torture, the United Nations Conventions on Corruption and Organized Crime, The European Transfer of Proceedings Convention, and the Inter-American Criminal Sentences Convention, to name a few.<sup>32</sup>

<sup>32</sup> A complete list is found in the table at the back of the *Proposed Convention* found in Appendixes I and II of this volume.

Yet although we benefited from the existence of current international criminal law instruments, the creative work of the Initiative was to meld these and our own ideas into a single, coherent international convention that establishes the principle of State Responsibility as well as individual criminal responsibility (including the possibility of responsibility for the criminal acts of legal persons) for the commission of crimes against humanity. The *Proposed Convention* innovates in many respects by attempting to bring prevention into the instrument in a much more explicit way than predecessor instruments, by including the possibility of responsibility for the criminal acts of legal persons, by excluding defenses of immunities and statutory limitations, by prohibiting reservations, and by establishing a unique institutional mechanism for supervision of the Convention. Echoing its 1907 forbear, it also contains its own Martens Clause in paragraph 13 of the Preamble. Elaborating the twenty-seven articles and six annexes of the treaty was a daunting challenge, and one that could not have been accomplished without the dedication and enthusiasm of many individuals.

First, I am deeply grateful to M. Cherif Bassiouni for his extraordinary contributions in leading the drafting effort and his service as a member of the Initiative's Steering Committee. I am equally grateful to Hans Corell, Richard J. Goldstone, Juan Méndez, William A. Schabas, and Christine Van den Wyngaert – the other members of the Steering Committee – for their leadership. Each member of the Initiative's Steering Committee brought tremendous energy and expertise to the project, guiding its methodological development and conceptual design and carefully reading, commenting on, and debating each interim draft of the *Proposed Convention* extensively. The collegial spirit with which our discussions were carried out and our work engaged helped enormously in keeping us on track, and the collective wisdom and experience of my colleagues made working on this project both delightful and inspiring. I really cannot thank them enough.

As with all such projects, many supported the effort without being on the front pages of it, so to speak. Of special note are the experts that gave generously of their time and talent, particularly Morten Bergsmo, Robert Cryer, Larry Johnson, Guénaél Mettraux, Laura M. Olson, Göran Sluiter, and Elies van Sliedgret, who attended one or more technical advisory sessions and contributed extensively to the elaboration of the Convention's text. In addition, our Senior Cash Nickerson Fellows, including Amitis (Amy) Khojasteh, Yordanka Nedyalkova (who also served as Associate Director of the Institute), B. Don Taylor III (who also served as Executive Director of the Institute), and Neill Townsend, did a marvelous job assisting with the project in so many ways – we are grateful for their enthusiasm and dedication. Our student Fellows did a terrific job as well, including Genevra Alberti, McCall Carter, Erika Detjen, Shannon Dobson, Andrew Esterday, Margaret LeBlanc, Jason Meyer, Stephanie Nickerson, Sarah Placzek, and Margaret Wichmann. We could not have managed the project without the institutional and personal support of Mark Wrighton, Chancellor of Washington University in St. Louis; Kent Syverud, Dean of the School of Law; Michael Peil, Associate Dean for International Programs;

Sherrie Malone, my faculty assistant; Linda McClain, the Institute's former Assistant Director; and Shelly Ford, the Institute's new Administrative Coordinator.

Our major conferences outside of St. Louis would not have been successful without the assistance of Carsten Stahn and the Grotius Centre at Leiden University, Wim Blockmans and The Netherlands Institute for Advanced Study, the City of The Hague, and The Brookings Institution. We are particularly grateful to Brookings for its superb support and organization of our final Phase III conference, particularly Brookings' President Strobe Talbott, Deputy Director and Senior Fellow Andrew Solomon, and Project Manager Jacqueline Geis. Robert S. Brookings endowed Washington University in St. Louis and the prestigious Washington, D.C., think tank that bears his name, and it is therefore somehow fitting that these two legacy institutions should collaborate on this important project.

We could not have undertaken this effort at all without the extraordinary support provided by Steven Cash Nickerson, Washington University alumnus, who gave generously to support the first three phases of the Initiative. Cash believed in this project from its inception, supporting it himself, and thereby helping us to raise monies elsewhere. We are grateful to the United States Institute of Peace, Humanity United, and the Brookings–Washington University Academic Venture Fund for additional, critical financial support. Finally, we thank our other institutional partners – the American Society of International Law, the International Law Association (American Branch), and the International Association of Penal Law (American Branch) – for their support of the Initiative's work as well.

At the end of the day, however, it is perhaps to Whitney R. Harris, former Nuremberg Prosecutor, to whom we are most indebted. For it was Whitney who, along with his fellow trial counsel, first prosecuted crimes against humanity at Nuremberg; Whitney who endowed the Institute bearing his name, providing it with the means to carry on his life's work; and Whitney who served as our counselor, advisor, and friend on this project, as with so many before it. I am sorry that he did not live to see it bear fruit.

One cannot embark on an endeavor such as this without being keenly aware of the currents of history. Here, in the heartland of America, calling for the elaboration of an international convention embodying international legal principles for the settlement of international problems, is not new. The Resolution responsible for the convening of the Second Hague Peace Conference – from which emanated the 1907 Hague Convention – issued from the Inter-Parliamentary Union meeting in St. Louis, Missouri, on the occasion of the 1904 World's Fair.<sup>33</sup> Indeed, the participants in the first meeting of the Initiative in April 2009 gathered in historic Ridgley Hall on the Washington University campus for a photograph, which was taken in the same room in which, 105 years earlier, the Inter-Parliamentary Union

<sup>33</sup> Editorial Comment, *The Second Peace Conference of the Hague*, 1 AM. J. INT'L L. 431 (1907). The hopes of that second Peace Conference, however, and the 1907 Convention it produced, were soon dashed as European leaders led their countries into the terrible war that followed.

had issued its call for peace. Nor is it unheard of for a group of experts<sup>34</sup> or an academic institution to spearhead an effort such as this. Witness, for example, the Harvard Research project in international law, which produced three draft conventions, published in 1935.<sup>35</sup> The authors of that project cautioned that the “drafts [were] completed within the limits of a rigorous time-schedule, by men already burdened with exacting duties; and these facts should be borne in mind in any appraisal of the work done.”<sup>36</sup> We hope that our work fares somewhat better, although the men and women who contributed to it, of course, were under the same constraints of busy schedules and deadlines.

What will become of the *Proposed International Convention on the Prevention and Punishment of Crimes Against Humanity*? Phase IV of the Initiative contemplates a global awareness campaign to help make the Convention a reality. But will States embrace this “academic offering” and take up the challenge to negotiate a convention for the suppression of crimes against humanity? Or will indifference continue to be the hallmark of international policy?

As Whitney R. Harris admonished us, shortly before his death:

The challenge to humanity is to establish and maintain the foundations of peace and justice upon the Earth for the centuries to come. We must learn to end war and protect life, to seek justice and find mercy, to help others and embrace compassion. Each person must respect every other person and honor the God who made this incredible mystery of human life a reality.<sup>37</sup>

I hope that this Initiative, undertaken by the Institute that bears his name, will contribute to the realization of these goals.

August 3, 2010

<sup>34</sup> The International Law Association, for example, elaborated a draft statute for an international criminal court in 1926. INTERNATIONAL LAW ASSOCIATION, REPORT OF THE THIRTY-FOURTH CONFERENCE (1927).

<sup>35</sup> *Codification of International Law*, 29 AM. J. INT'L L. (Supp.) (1935).

<sup>36</sup> *Id.* at 8.

<sup>37</sup> Whitney R. Harris, *This I Believe*, written and recorded for National Public Radio, June 12, 2006.