International Humanitarian Law

PROSPECTS

Edited by
John Carey
William V. Dunlap
R. John Pritchard

International Humanitarian Law: Prospects

Edited by

John Carey
William V. Dunlap
R. John Pritchard

Transnational Publishers

Published and distributed by Transnational Publishers, Inc.
Ardsley Park
Science and Technology Center
410 Saw Mill River Road
Ardsley, NY 10502

Phone: 914-693-5100
Fax: 914-693-4430
E-mail: info@transnationalpubs.com
Web: www.transnationalpubs.com

Library of Congress Cataloging-in-Publication Data

International humanitarian law / edited by John Carey, William V. Dunlap, R. John Pritchard.
p. cm.
Includes index.
Contents: v. 1 Origins
ISBN 1-57105-264-X
1. Humanitarian law. 2. War victims-Legal status, law, etc.
I. Carey, John. II. Dunlap, William V. III. Pritchard, R. John.

KZ6471 .15686 2002
341.4'81-dc21.

2002040915

ISBN 1-57105-265-8 Volume 2 (Challenges)
ISBN 1-57105-266-6 Volume 3 (Prospects)

Manufactured in the United States of America

CONTRIBUTORS

John Carey, editor for 37 years of the *United Nations Law Reports*, unofficial reports concerning legal matters in the United Nations, served for 25 of those years as Alternate United States Member of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities. He taught international criminal law as an Adjunct Assistant Professor at New York University School of Law, where he had received an LL.M. degree in international law following his LL.B. from Harvard and B.A. at Yale (Phi Beta Kappa). He was Vice President of the American Society of International Law and a member of the Board of Editors of the *American Journal of International Law*. After practicing law as a partner for 26 years in the New York City office of a major international law firm, Coudert Brothers, he became a New York State judge, presiding in civil and criminal trials. He had previously served as an assistant district attorney, for six years as an elected city councilman, and for eight as an elected city mayor. He has published numerous articles and chapters as well as one book, *UN Protection for Civil and Political Rights* (1970), while editing several volumes.

Paul Conlon received his *fil kand* (sociology/Russian, 1971) and *fil dr* (sociology, 1974) from the University of Lund. He worked for the United Nations Centre against Apartheid as a consultant from 1983 to 1988 and thereafter as an official. From 1990 to 1995, he was an official with the Iraq sanctions committee of the Security Council and has described his experiences there in *United Nations Sanctions Management: A Case Study of the Iraq Sanctions Committee, 1990–1994* (Transnational Publishers 2000). He is also the author of *Die rechtliche Problematik von UN-Sanktionen als Mittel zur Durchsetzung des Völkerrechts* (Walther-Schücking Kolleg, vol. 19, 1996) and a number of articles on various aspects of multi-lateral sanctions. Since 1995 he has been a business mediator and freelance translator in Munich.

Anthony D'Amato is the Leighton Professor of Law at Northwestern University School of Law, where he teaches courses in international law, international human rights, analytic jurisprudence, and justice. He received his law degree from Harvard Law School and a Ph.D. from Columbia University. He is admitted to practice before the U.S. Supreme Court, the U.S. Tax Court, and several U.S. Circuit Courts of Appeal and is a member of the New York Bar. Professor D'Amato was the first American lawyer to argue (and win) a case before the European Court of Human Rights in Strasbourg, and he has litigated a number of human rights cases around the world. He is the author of more than 20 books and more than 110 articles. Biographies of Professor D'Amato can be found in Who's Who in America, Who's Who in American Education, and Who's Who in American Law.

William V. Dunlap is a professor at the Quinnipiac University School of Law, where he teaches criminal, constitutional, national security, and international law, including human rights and humanitarian law. He holds a B.A. from the New School for Social Research, an M.Phil. from the Scott Polar Research Institute of the University of Cambridge, and a J.D. from Yale University. He has been a visiting scholar at the Yale Law School and the Institute of Advanced Legal Studies, University of London, and has taught at Yale University, Long Island University, and Southern Connecticut State University. He is a fellow of the Royal Geographical Society and of the Cambridge Philosophical Society. He has published a monograph on the legal status of the Russian arctic straits and numerous papers on international criminal law and on transboundary resources and the law of the sea, with particular regard to sovereignty, jurisdiction, and cooperation in the Arctic seas. He is a former chair of the Section on International Law of the Association of American Law Schools. Before teaching, Professor Dunlap practiced international commercial litigation and arbitration with the Coudert Brothers law firm and before that was a newspaper editor and public radio producer in New York. He lectures on civil liberties and national security and comments regularly on radio and television on legal and political matters.

Craig Etcheson was a visiting scholar at the Johns Hopkins University's Foreign Policy Institute in 2001–2002, and again from 2004 through 2005. He served as program manager for Yale University's Cambodian Genocide Program from 1994 through 1996 and as acting director during 1997. Etcheson was also a principal founder of the Documentation Center of Cambodia in Phnom Penh, serving as its director in 1995 and 1996, and since then has served as an adviser to the center.

He is the author of several treatises on Cambodia, including *The Rise and Demise of Democratic Kampuchea* (1984); *Retribution and Reconciliation: Healing What Ails Cambodia* (2001); *Reconciliation in Cambodia: Theory and Practice* (2004); *After the Killing Fields: Lessons from the Cambodian Genocide* (2005); and *Extraordinary Chambers: Law, Politics and War Crimes Tribunals* (in preparation). Etcheson holds a Ph.D. in International Relations from the University of Southern California (1985).

Benjamin B. Ferencz was born in Transylvania and raised in New York. He graduated from the Harvard Law School and saw military service in World War II. As a war crimes investigator, he joined in the liberation of several German concentration camps. At 27, he was designated as Chief Prosecutor for the United States in the Nuremberg trials of SS extermination squads responsible for the murder of over a million innocent people. After the war, he helped to fashion and implement German laws to compensate victims of Nazi persecution and directed a worldwide legal aid network to assist survivors with their claims. He has served the American Society of International Law as its Vice-President and has taught at Pace Law School as an adjunct professor.

He is the author of many books, including: *Defining International Aggression: The Search for World Peace, A Documentary History and Analysis* (2 vols. 1975, 1979); the prize-winning *Less Than Slaves: Jewish Forced Labor and the Quest for Compensation* (1979); *An International Criminal Court: A Step towards World Peace* (2 vols. 1980); *Enforcing International Law: A Way to World Peace* (1983); *Planethood: The Key to your Future* (with Robert Muller and Ken Keyes 1991); and his most recent *New Legal Foundations for Global Survival: Security through the Security Council* (1994). Married with four grown children, Professor Ferencz lives in New Rochelle, New York.

Leslie C. Green is a member of the Order of Canada and a fellow of the Royal Society of Canada. He was born in London, U.K. and graduated in law from the University of London in 1941, where he was awarded the Joseph Hume Scholarship in Jurisprudence and the Cecil Peace Prize. In 1954, he received the Grotius Medal from the Grotius Foundation, Munich. In 1976, he earned an academic LL.D. from the University of London. The University of Helsinki granted him its Rector's Medal in 1994, and the Canadian Council on International Law awarded him the Read Medal in International Law in 1997. He holds a Certificate of Appreciation from the Canadian Department of National Defence for services to the Judge Advocate General's Department.

From 1941 to 1946, he served in the British Army, first as a Japanese translator and then as Deputy Military Prosecutor at GHQ India., retiring in 1946 with the rank of major. From 1946 to 1960, he was a lecturer in law at the University of London and from 1960 to 1965, professor of international law at the University of Singapore, serving as dean from 1964 to 1965. He moved to Canada in 1965 as professor of political science at the University of Alberta. He received the title University Professor in 1969 and Honorary Professor of Law in 1985. He retired in 1991 and holds the title University Professor Emeritus. He has been a visiting professor at Kyung Hee University in Seoul, Korea, and the University of Denver College of Law. From 1996 to 1998, he was Charles H. Stockton Professor of International Law at the U.S. Naval War College, the first non-American to hold that chair. In 2000, the Naval War College published a *festschrift* to mark his 80th birthday.

Professor Green was Academic in Residence at the Legal Department of the Canadian Department of External Affairs, 1974–75; Legal Adviser to the Canadian delegation at the Diplomatic Conference on Humanitarian Law, which produced the 1977 Protocols to the Geneva Conventions, 1975–77; Academic in Residence at the Department of the Judge Advocate General, Ottawa, 1979–80, responsible for the first draft of a Canadian manual of war law; and Canadian member of the Committee of Experts on Naval Warfare responsible for the San Remo Manual, 1989–95.

His principal books are *Law and Society* (1975), *Superior Orders in National and International Law* (1976), *Essays on the Modern Law of War (2d ed. 1998), The Contemporary Law of Armed Conflict* (2000), and *The Canadian Manual of Armed Conflict Law* (2000)

Dr. Avril McDonald is head of the Section of International Humanitarian Law and International Criminal Law at the T.M.C. Asser Instituut for International Law, The Hague; managing editor of *the Yearbook of International Humanitarian Law*; lecturer in International Humanitarian Law at the University of Groningen; and adjunct lecturer in Advanced International Law (International Peace and Security) at the Amsterdam School of International Relations. She earned an LL.B. and an M.A. at Trinity College Dublin, an LL.M. at the Queen's University of Belfast, and a graduate diploma in journalism at Dublin City University. Her Ph.D. dissertation, at Queen's University of Belfast, in 2002, was entitled *The Rights to Legal Remedies of Victims of Serious Violations of International Humanitarian Law*. An expanded version of the study is forthcoming.

Wade Mansell, B.A., LL.B., LL.M. (Victoria University of Wellington), is a barrister and solicitor (New Zealand) and senior lecturer in law. He joined Kent Law School having previously taught in Wellington and London. He is convenor of the public international law courses at both the undergraduate and graduate levels and is the director of the LL.M. in International Law with International Relations at both the Brussels School of International Studies and at Canterbury. He regularly supervises M.Phil. and Ph.D. research students.

He has published in the areas of public international law, human rights, development and international debt, torts, and the sociology of law. Two of his co-authored books, *The Wrongs of Tort* (with Joanne Conaghan, Pluto 1993) and *A Critical Introduction to Law* (with Belinda Madwort and Alan Thomson, Cavendish 1995) have been republished in new editions. A second edition of *The Wrongs of Tort* appeared in 1999 with a further edition expected in 2006; while a third edition of *A Critical Introduction to Law* appeared in 2004. He also co-authored *Teaching Human Rights*, now in its second edition (UK Center for Legal Education, 2002). With Joanne Scott of the Faculty of Law Cambridge, he has written on development, trade, and regional policy.

His current research is concerned with a critique of international law and North/South issues. The role of the "neo-conservatives" in U.S. attitudes to international law is the subject of an article "Goodbye to All That? The Rule of Law, International Law, the United States, and the Use of Force" in *The Journal of Law and Society* (Winter 2004), and also of another article, written with Emily Haslam, "John Bolton and the United States' Retreat from International Law" in *Social & Legal Studies* (Vol. 14(4)). All his work is concerned with the interplay of law and politics (and power) and with wider questions of distributional justice; critical legal scholarship is central in his research.

Frédéric Mégret is an assistant-professor at the Faculty of Law of McGill University (Montréal) where he holds the Canada Research Chair in the Law of Human Rights and Legal Pluralism. He holds a joint doctorate in public law from the University of Paris I and a Ph.D. in international relations from the Graduate Institute of International Studies of the University of Geneva, as well as an LL.B. from King's College London, and a Maîtrise de droit privé and Diplôme d'études approfondies en droit international public from the University of Paris I (Panthéon-Sorbonne). He was lauréat avec félicitations du jury of the Institut d'Etudes Politiques de Paris where he studied international relations and has studied international law at the University of Leyden. In the course of his military service, he served in the Eurocorp in Germany, and as a UNPROFOR "blue helmet" in Sarajevo (1995). He has worked for several law firms in Paris, London, and New York, and has been a consultant for a defense team before the ICTR, as well as for the ICRC. He was a member of the French delegation at the Rome Conference on the creation of an ICC. He is the author of *Le Tribunal pénal international pour le Rwanda* (Pédone 2002).

Jordan Paust is Mike and Teresa Baker Law Center Professor, University of Houston. He obtained his A.B. in 1965, his J.D. in 1968 from U.C.L.A.; and an LL.M. in 1972 from the University of Virginia. Editor, *Yale Studies in World Public Order*. Admitted to the California Bar in 1969. He was a J.S.D. Candidate and Ford Foundation Fellow at Yale University (in residence 1973–75). He served on the faculty of the International Law Division, The U.S. Judge Advocate General's School, U.S. Army, 1969–73; was Visiting Associate Professor of Law at Indiana University, Bloomington, 1976–77; Visiting Fulbright Professor of Jurisprudence at the University of Salzburg, Austria, 1978–79; Visiting Edward Ball Eminent Scholar Chair, Florida State University, Spring 1997.

In addition to numerous articles and essays, his published work includes *War Crimes Jurisdiction and Due Process: A Case Study of Bangladesh* (with A. Blaustein, 1974); *The Arab Oil Weapon* (with A. Blaustein, 1977); *The Military in American Society: Cases and Materials* (with Zillman, Blaustein, Sherman, et al., 1978); *International Law as Law of the United States* (1996, 2d ed. 2003); *International Criminal Law* (with M. Cherif Bassiouni, et al., 1996, 2d ed. 2000) and *International Law and Litigation in the U.S.* (with Fitzpatrick & Van Dyke, 1999; 2d ed. with Van Dyke & Malone, 2005).

He is a Member of the ASIL (Working Group on Terrorism, 1975–77. Human Rights Advocacy Interest Group, since 1985, Executive Council, 1989–92, President's Commission, 1990–91, Co-Chair, International Criminal Law Interest Group, since 1992); the AALS (Section on International Law, Chair, Committee on Public Relations, 1979–83, Executive Council, 1982–85, 1987, Secretary, 1989, Chairman, 1991–93); International Law Association, American Branch (Committee on Armed Conflict, 1979–83, Committee on Human Rights, since 1983, Committee on International Law in Domestic Courts, since 1992). Chairman, ABA Committee on International Law & the Use of Force, 1975–78.

R. John Pritchard earned his A.B. in History from the University of California at Riverside, an M.A. (History) and Ph.D. (Econ.) in International History from the London School of Economics & Political Science, an LL.B in Law from the University of Kent at Canterbury, and took the Bar Vocational Course at the Inns of Court School of Law in London. He is a Fellow of the Royal Historical Association and a Member of the Middle Temple. He has held academic appointments in History and Law at the University of California; the London School of Economics & Political Science; Kings College (London); the University of Manchester; the University of Kent at Canterbury; and Stafford House College, Canterbury.

In addition to published books on International Criminal Law and human rights law including *The Tokyo Major War Crimes Trial*, a new and definitive 124-volume collection on the International Military Tribunal for the Far East (1998–) and numerous contributions to collective works, such as his "International Military Tribunal for the Far East and the Allied National War Crimes Trials in Asia", in 3 *Enforcement, International Criminal Law* 109 (M. Cherif Bassiouni ed., 2d ed. 1998). He is the author of a number of works on political and international history including *Total War: Causes & Courses of the Second World War* (with Peter Calvocoressi and the late Guy Wint, 1989, 1995, 1999 & 2001 eds.); *The Reichstag Fire: Ashes of Democracy* (1971); and *Far Eastern Influences upon British Strategy towards the Great Powers* (1987). He has other works in progress on the British trials of Japanese war criminals and on all of the Allied Trials of Italian war criminals in the aftermath of the Second World War and an updated edition of Sir John Frederick Maurice's classic work *Hostilities without Declaration or War: An Historical Abstract of the Cases in Which Hostilities have Occurred between Civilized Powers Prior to Declaration or Warning* (1st ed. 1883).

Paul D. Rutkus interned with the Office of the Prosecutor, International Criminal Tribunal for the Former Yugoslavia in the Hague. He has recently completed the combined LL.B.-M.P.A. program at Dalhousie University, is currently an LL.M. candidate at the University of Ottawa, and is a Consultant in the United Nations, Criminal and Treaty Law Division of the Canadian Department of Foreign Affairs and International Trade. He will be articling with the government of Canada in War Crimes Prosecutions, Criminal Prosecutions, Taxation Prosecutions, and International Law Advisory. Nothing in this chapter should in any way be deemed indicative of the position of either the ICTY or the government of Canada.

FOREWORD

International humanitarian law is a during-the-fact kind of law even more than it is an after-the-fact law. Although trials of alleged war criminals dominate the headlines these days, the application of IHL during a war is the most significant test of whether that body of law can achieve its purpose: to mitigate the horrors of war and reduce the number of civilian casualties.

As I write these words at the end of the month of July 2006, the terrorist organization Hezbollah has been firing rockets at Israeli population centers. While the authors of the present volume may differ about some of the finer points of IHL, it is crystal clear that they would regard the targeting of undefended civilian population centers as a war crime. Of course, even the certainty of being prosecuted for a war crime is not likely to deter a jihadist terrorist who seeks the delights of a heavenly life after death.

Israel, in turn, engaged in daily incessant bombing of Lebanon, is causing enormous damage to the civilian infrastructure and is killing many of the Lebanese people. Can Israel defend the killing of civilians on the ground that "all bets are off" in this war? Does Hezbollah's blatant disregard of the laws of war allow Israel an unlimited right of retaliation?

Again there can be no doubt that the contributors to these three volumes would come up with the same answer: One side's violation of IHL is no excuse for a violation by the other side. This is a rule set in stone. The uncertainty of some of the rules of IHL does not mean that all its rules are questionable.

To be sure, one of the earliest sources of IHL, the Hague Conventions of 1907, contained a curious qualification: that the laws of war contained therein would only apply if all the parties to a war were parties to the Conventions. At the time this qualification reflected the fear of some state officials that a war could be circumscribed by law only if all the combatants were bound by the same law. But their misgivings were buried with the judgments of the Nuremberg Tribunal after World War II: The operative provisions of the Hague Conventions of 1907 had passed into customary international law and therefore were binding on all states irrespective of whether they had signed the Hague Conventions.

What is Israel's legal defense to the extensive damage that its Air Force is inflicting upon Lebanon at the present moment? Israel's defense is that this damage is "collateral" to its targeting of Hezbollah which, unfortunately, has embedded itself in many of the Lebanese population centers. We know that the Israeli

government is being advised by international lawyers of the first calibre. May we assume that these lawyers are sensitive to the international obloquy that Israel would face if in fact it was deliberately targeting civilian targets? For my part, this is a reasonable assumption. The term "collateral damage" can apply even if there is *extensive* damage to civilians.

But that is not the end of the legal analysis. The extent of permissible collateral damage is bounded by the IHL doctrine of proportionality. For example, is it "proportional" to bomb a civilian apartment building because Hezbollah has rented an office there (an actual reported incident)? Is it "proportional" to destroy a suburban neighborhood because Hezbollah has hidden a rocket launcher between two buildings in that neighborhood? These are difficult questions. Professor Jordan Paust, writing in this volume, explores generally the extent of war-crimes liability for collateral damage.

Terrorism by its nature tests the patience of military leaders. They desire no-holds-barred retaliation against terrorists irrespective of collateral damage. International humanitarian law pushes up against this impulse for unlimited retaliation. What is our destiny: law or anarchy? In the days ahead, no question can be more important for the civilized world than this question.

It has been my distinct honor and privilege to have been invited to write a Foreword to each of these three well-conceived and brilliantly executed volumes on international humanitarian law.

Anthony A. D'Amato
Leighton Professor of Law
Northwestern University
Chicago, July 2006

INTRODUCTION TO VOLUME III—PROSPECTS

William V. Dunlap

When we gathered in Vienna in 1998 for the workshops that were eventually to grow into this series of volumes on the origins, challenges, and prospects of international humanitarian law, the horrendous and world-changing events of September 11, 2001, were nearly as far in the future as they are now in the past as the third and final volume goes to press.

Since that day, millions of people who had never heard of—or at least thought much about—international humanitarian law have been bombarded daily with news and commentary that impressed its existence and importance on the public consciousness and conscience. For many, for the first time, the laws of war meant something more than "name, rank, and serial number," never a completely accurate delimitation of the interrogation of prisoners of war, but close enough for popular consumption. Abu Ghraib and Guantánamo soon supplanted Tamarkan ("The Bridge on the River Kwai"), Stalag Luft III ("The Great Escape"), Stalag 13 ("Hogan's Heroes"), and the eponymous Stalag 17 as the popular images associated with prisoners of war, and these real-life images—whether of the prisoners or of the guards—were grimmer than most had expected. In the popular, sometimes comedic, representations of POW camps, the guards (invariably German or Japanese) were the villains, and it came as a shock to the American national psyche that this could be so even when the guards were Americans.

The response of the American government was swift and predictable: It never happened. If it did happen, they were just a few isolated incidents. And anyway, they did not violate international law, because the Geneva Conventions do not apply to "terrorists." By now, we know that none of that was true. The incidents are well documented and numerous, and President Bush himself has announced that the Geneva Conventions apply to all detainees in what he proclaimed as "the war on terror," now "the long war." The apparent change in direction is due in large part to the United States Supreme Court's ruling in *Hamdan v. Rumsfeld*, 548 U.S. ___, 126 S.Ct. 2749 (2006), which not only reinforces the role of the Congress in determining United States policy but also makes clear that the Geneva Conventions do apply, to the surprise of few outside of the United States.

One can hope that the *Hamdan* case marks the end of a brief diversion from the history of progressive development that the law of armed conflict has been enjoying for the past century and more. It was a sharply divided Supreme Court that rebuked the President and his attempts to evade his constitutional limitations and the international obligations of the United States, but it was a rebuke nonetheless. It is not at all clear whether that diversion was fueled by a misreading of the end of the cold war and America's role as the "world's sole superpower," or by a exuberance at finally being in a position to put neoconservative ideas to work, or by a misguided notion of American exceptionalism, or just by a good old Texas-style I've-got-a-job-to-do-and-nothing's-gonna-stand-in-my-way attitude. Whatever prompted it, it now appears that the political appointees in the White House who have been dictating the legal analysis to the professional lawyers at the Justice Department, the Pentagon, and the State Department Legal Adviser's Office—instead of the other way round—may be getting the message. This volume, then, is coming out at a most propitious time.

It became clear soon after September 11, 2001, that the world would be looking differently at international humanitarian law. What to do, then, with a volume—well under way—on the prospects of international humanitarian law. The regime of the Hague and Geneva Conventions was facing perhaps its gravest challenge ever, even while other developments—notably the creation of the International Criminal Court—were carrying international humanitarian law in new directions. After much consideration, we decided that the new debates over Guantánamo, "enemy combatants," and the Geneva Conventions should not draw attention away from the broad range of issues addressed in this volume—the ICC, victims' rights, sanctions regimes, and ad hoc tribunals—and that it would be a disservice to sideline these discussions while reshaping the book around the Guantánamo and Abu Ghraib phenomenon. So we retained our original structure, updated the contributions, and invited a particularly respected scholar to address the new central question raised by the United States' response—Do terrorists have rights under international humanitarian law?

Leslie C. Green, among the most distinguished commentators on the law of armed conflict, answers that question with a resounding "yes" in the opening chapter, "The Relevance of Humanitarian Law to Terrorism and Terrorists" (the only essay here to have been written entirely after the events of 2001). Professor Green, after reviewing the antiterrorist conventions, the UN principles on the treatment of prisoners, international human rights treaties, the Geneva Conventions, and judicial decisions in Canada, Britain, and the United States, reaffirms the universality of humanitarian law and its application to everyone, even terrorists. If "they" had treated "our" personnel as "we" have treated "theirs" at Abu Ghraib and Guantánamo, he reminds us, captured offenders would have been charged with war crimes and, on conviction, would have been sentenced to long terms of imprisonment or condemned to death. Meanwhile, the Bush administration, as this volume goes to press, seems to be, gradually and grudgingly,

coming around to this point of view while denying that the doctrine of command responsibility appears to lead directly to the Pentagon and the White House.

Nevertheless, in a British case that, like *Hamdan*, was decided too late for Professor Green to discuss, it would appear that the House of Lords has restricted the reach of international humanitarian law. The Lords held, in *R. v. Jones*, [2006] UKHL 16, that, in the absence of appropriate legislation by Parliament, the courts of the United Kingdom (and by extension the far-flung British Commonwealth) are powerless to recognize the authority of international law and that they lack capacity to rein in the actions of the Crown when any British Government—under cloak of the royal prerogative to wage war—commits crimes against peace or crimes against humanity. It is not open to the courts, said the Lords, even to consider whether such crimes have been committed by a British Government. Thus while the power of any British Government to try *enemy* war criminals for war crimes, crimes against humanity, or crimes against peace has been demonstrated in the distant and not-so-distant past, its power to hold *British subjects* to account may be highly restricted.

Shortly after the end of the Second World War, a young Army lawyer asked the Nuremberg Tribunal to affirm, through law, the human right to live in peace and dignity. Nearly sixty years later, Benjamin B. Ferencz, who in the meantime has become one of the world's most passionate and eloquent spokesmen for international law and justice, repeats, this time to the world community, that same "Plea of Humanity to Law." Whether through ad hoc international criminal tribunals, or the International Criminal Court, or the Security Council's enforcement powers—or all of the above—those who violate the international laws of humanity must answer for their deeds. The people of the world must send this message to their leaders—or pray that they themselves do not become the next victims.

"International criminal law in any true sense does not exist," wrote Georg Schwarzenberger (one of Leslie Green's law professors at University College, London, before the Second World War), midway through the twentieth century. At the opening of the twenty-first, the Statute of Rome went into effect, creating the world's first standing international criminal court. Even if Schwarzenberger was correct at the time, does the birth of the ICC mean that an international criminal law in some true sense does now exist? What is the implication of the ICC for the concept of national sovereignty, for the state's monopoly on criminal jurisdiction, or the implication of sovereignty for the success of the ICC? In "The Creation of the International Criminal Court and State Sovereignty: 'The Problem of an International Criminal Law' Re-examined," Frédéric Mégret, one of Canada's outstanding international legal scholars and a former UNPROFOR "blue helmet" in Sarajevo, examines in extraordinary detail and depth these tensions and contradictions, wondering whether the ICC can ever become a defining force in global relations.

Wade Mansell of the University of Kent can muster but "Two Cheers for the International Criminal Court." He welcomes the creation of the ICC but with a caveat: One byproduct, not necessarily unintended, is a formal relegation to second-class status of economic, social, and cultural rights, as opposed to the civil and political rights that the court will have jurisdiction to enforce. He sees this as one more step in the triumph of liberal rights over economic rights, which earlier was reflected in the decision to enforce the Universal Declaration of Human Rights by two separate international covenants and which has accelerated with the ascendancy of liberal capitalism over socialism. Why, he asks, should a failure to protect economic rights not be as much an offense as a violation of civil and political rights? Like any other international instrument, the Treaty of Rome was a product of realpolitik and idealism. As Mansell implies, there were limits to what influential countries were prepared even to consider.

In much the same way, compromises can be found in the Rome Statute's definitions of crimes, which define the ICC's jurisdiction. On the one hand, its definition of genocide is virtually synonymous with that of the Genocide Convention and of a growing body of customary international law, but there the similarity ends. The ICC's jurisdiction over the other categories of offenses within the ICC's jurisdiction—crimes against humanity and war crimes—is severely limited by, for example, the use of such limiting words as "widespread" and "systematic," which do not appear in other international instruments and case law defining, refining, and even extending these offenses. This means, says Professor Jordan Paust, a leading scholar of international criminal law, in describing the restrictive nature of the "Crimes within the Limited Jurisdiction of the International Court," that primary competence and responsibility for prosecuting (or extraditing) those accused of war crimes and crimes against humanity continues to lie with nation-states and the international ad hoc tribunals.

As this volume goes to press, it appears that a new mixed tribunal of Cambodian and international prosecutors and judges will be convened after all, ending the long period of uncertainty about that which has lain across the conscience of mankind since the 1970s. It was hard enough to persuade the international community that, as a general proposition, a Cambodian war crimes tribunal was a good idea. Once it had finally been agreed that the Khmer Rouge would be held accountable for their atrocities in Cambodia, the debate had just begun. Under whose authority would a tribunal be established—the Security Council, the General Assembly, the Cambodian government, a "third" country" a Nuremberg-style coalition? The question of venue, too, was critical, for where a tribunal sits bears heavily on cost, political interference, witness protection, and the message that the trials would send to the survivors. Questions of temporal and personal jurisdiction—which crimes and which persons are to be prosecuted—may be influenced as much by raw politics as by notions of justice. In "Designing Justice for Cambodia's Khmer Rouge," Craig Etcheson, who helped found and then directed the Documentation Center of Cambodia in Phnom Penh, examines these "practical issues" that will face the organizers of every future ad hoc tribunal.

In the spring of 1999, as NATO forces launched an intensive humanitarian intervention to suppress the ethnic cleansing and other large-scale violations of international humanitarian law in Kosovo, the Federal Republic of Yugoslavia brought eleven actions in the International Court of Justice, asking the court to find that members of NATO had violated their obligations under the UN Charter. As it was undisputed that NATO forces were attacking Yugoslavia, what was the legal justification? Given that the UN Security Council had not specifically authorized this particular intervention, was this no more than regional vigilante justice? The ICJ has since dismissed all the cases on jurisdictional grounds, so the question remains judicially unresolved. One possible answer lies with the ICTY, the International Criminal Tribunal for the Former Yugoslavia. In "NATO's Attack on Yugoslavia: The Deputation of an Ad Hoc International Constabulary," Paul Rutkus, lecturer of international criminal law at Carleton University, explores whether the Security Council could have delegated a measure of Chapter VII peacemaking authority to the ICTY, which in turn could have authorized NATO's member states to assist the Tribunal in protecting victims and witnesses, securing evidence and crime scenes, and detaining suspects and surrendering indictees for trial.

Economic sanctions, originally conceived as measures of international collective coercion short of military force and as mechanisms for enhancing the role of the less-powerful but peaceable states, have proved to be highly controversial. They have been denounced as genocide and as institutionalized racism, and, says Paul Conlon, the United Nations in recent years has spent as much effort mitigating the effects of its own economic sanctions as it has enforcing them. Dr. Conlon, a former official of the United Nations Centre against Apartheid and of the Security Council's Iraq Sanctions Committee, suggests that sanctions as they have been applied violate the principles and goals of international humanitarian law, particularly the Fourth Geneva Convention, concerning civilian populations. Sanctions, he suggests, should be administered with humanitarian considerations and general legal principles in mind. Proportionality, for example, dominates every legal discussion of military reprisal but seldom enters into the evaluation of sanctions—either their enforcement or humanitarian measures to mitigate their effects. With well over half a million deaths in Iraq caused by U.S.-led UN sanctions between 1991 and 2003, it is easy to argue that proportionality must rein in what can be permitted in the name of international law or international politics. Dr. Conlon proposes not only adapting sanctions regimes to humanitarian law but also "Adapting Traditional Humanitarian Law to Sanctions."

Until the mid-twentieth century (and in some countries, such as Japan, even to this day) individuals were generally regarded exclusively as objects, rather than subjects, of international law, enjoying no personal rights and holding no obligations. Perpetrators of war crimes, in the broad sense, have marked a sharp exception to the rule, as they (sometimes) can be brought to personal justice under the Geneva Conventions and the Nuremberg principles. Avril McDonald suggests that the perpetrators' victims, too, are now beginning to find recognition in the inter-

national criminal justice system. Though the statutes of the ad hoc tribunals made little or no effort to accommodate the interests of the Yugoslav and Rwandan victims of those atrocities, the Statute of the ICC has integrated victims into the process by requiring their interests to be considered at every stage—by the prosecutor, the Pre-Trial Chamber, the Trial Chamber, and the Appeals Chamber. Significantly, victims may make submissions directly to the court. In "The Development of a Victim-Centered Approach to International Criminal Justice for Serious Violations of International Humanitarian Law," Dr. McDonald, an IHL scholar at the T.M.C. Asser Instituut and editor of the *Yearbook of International Humanitarian Law*, suggests that this is a good start but that a great deal more remains to be done, especially regarding reparations.

As the volume ends, so does the series—as it began—with R. John Pritchard examining British war crimes trials in the aftermath of past wars, in the hope that these experiences might offer some insight into the implications of how such trials may be conducted today or in the future. In "The Parameters of Justice: The Evolution of British Military and Civil Perspectives on War Crimes Trials and Their Legal Context," Dr. Pritchard, one of the most prolific and distinguished historians of war crimes trials, concludes that concerns about fairness to perpetrators gave way to political expedience and haste in the disposition of clemency, displacing concern for victims and justice and ultimately poisoning Britain's relationship with Germany, Italy, and especially Japan after the Second World War. As we face the winding down of the International Tribunals for Yugoslavia and Rwanda and other ad hoc tribunals, who is going to govern the administration of clemency and parole when the judges are no longer there? Will the prisoners be in the hands of some other legal authority, or will these important questions of justice fall to politicians?

* * *

In the meantime, the scope and concerns of international humanitarian law continue to grow. The Bush administration may, paradoxically, have strengthened the IHL regime through its efforts to disregard the Geneva Conventions. Public disgust at efforts to deny or condone torture and inhumane treatment, combined with a pragmatic recognition that U.S. soldiers taken prisoner elsewhere in the world could be on the receiving end of such treatment, reinforced in the public mind the need for binding international rules of war. Indeed, it was military lawyers who led the opposition, within government and without, against the administration's efforts to undercut the Geneva Conventions.

Will the public support of the Geneva Conventions translate into similar support for the International Criminal Court? There is no logical reason that it must. The United States has long been legally bound by the Geneva Conventions, and the reciprocal benefits they provide are, or so one might have thought until recently, beyond questioning. The debate over the ICC, on the other hand, is whether to