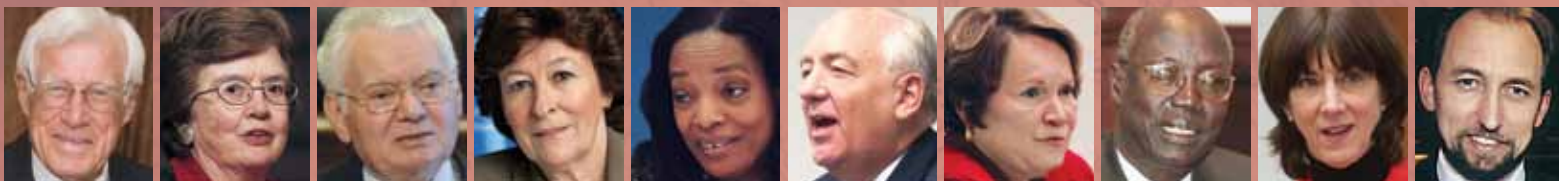


Washington University Law

Whitney R. Harris World Law Institute

Celebrating Our 10th Year



*Feature: The Proposed International
Convention on the Prevention and
Punishment of Crimes Against Humanity*


Washington
University in St. Louis
SCHOOL OF LAW

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New York University School of Law

THOMAS M. FRANCK
1931–2009

WHITNEY R. HARRIS
1912–2010

WHITNEY R. HARRIS WORLD LAW INSTITUTE MAGAZINE

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IN MEMORIAM: PROFESSOR THOMAS M. FRANCK

Professor Thomas M. Franck, a prominent expert in international law and a member of the Harris Institute's International Council, died on May 27, 2009. He was 77.



Professor Franck was the Murry & Ida Becker Professor of Law Emeritus at New York University, where he taught from 1957 until his retirement in 2002. Founding director of the Center for International Studies at NYU, he was the author of numerous books and many scholarly articles on international law.

A refugee from Nazi Germany, Professor Franck dedicated his career to the cause of international human rights. He served as a legal adviser to many foreign governments and worked on the constitutions for several African nations: Tanganyika and Zanzibar, which became Tanzania; Rhodesia, now Zimbabwe; and Sierra Leone. Additionally, he was an ad hoc judge and advocate before the International Court of Justice. From 1995 to 2007, he served as counsel to Bosnia in the case against Serbia concerning the massacre of about 8,000 Bosnians in Srebrenica.

IN THIS GLOBAL AGE of legal education and law practice, it is reassuring to know that 10 years ago Washington University School of Law was at the vanguard of schools creating centers on international legal issues. This magazine celebrates the first decade of our Whitney R. Harris World Law Institute, which today is among the top international and comparative law centers in the world.

Named after former Nuremberg prosecutor Whitney R. Harris, the Harris Institute has expanded from sponsoring cutting-edge conferences and scholarship to spearheading one of the most ambitious projects ever undertaken by a law school in the field of international law, the Crimes Against Humanity Initiative. As you will read in this magazine, this ground-breaking initiative has drawn upon the expertise of some of the world's most renowned international legal practitioners, judges, and scholars to create a proposed convention for the condemnation and prevention of such crimes.

It is fitting that the Harris Institute is based at our law school, which has an extraordinary array of international assets and programs, including talented faculty, an increasingly global alumni base, and both students from abroad and traditional law students interested in transnational legal issues. The Harris Institute's work dovetails with other exciting initiatives, such as our Transnational Law Program, Executive LLM Program, and Summer Institute for Global Justice. It also builds upon other Washington University partnerships and outreach efforts, including the



McDonnell International Scholars Academy, which is devoted to developing future global leaders.

The Harris Institute and the Crimes Against Humanity Initiative are both headed by Professor Leila Nadya Sadat, whose tireless commitment to the project has been essential to its ultimate success. Indeed, the Harris Institute owes its success today to not only our generous sponsors, including Whitney and Anna Harris and Cash Nickerson, but also to the visionaries who established it 10 years ago—Professor Stephen Legomsky, the founding director; Chancellor Mark Wrighton; and Joel Seligman, my predecessor as dean. I am pleased that under the tenure of subsequent directors John Haley, and now Leila Sadat, the Harris Institute has continued to grow and thrive, conducting substantive research and offering programs for students, a world-class speaker series, and an ambassador's program bringing foreign policy perspectives to the law school. While we miss Whitney Harris who passed away in April, we remain forever inspired by his unflagging fight for international justice and vision of a world united under the rule of law.

As we celebrate the Harris Institute's 10th year, I hope you will enjoy reading about its many exciting programs and projects. I would also like to take this time to congratulate its faculty and staff and to wish it well in the coming years.

Kent Syverud

Dean of the Law School,
Ethan A.H. Shepley University Professor,
and Associate Vice Chancellor of
Washington, D.C., Programs

Anna Harris, Whitney R. Harris, and Chancellor Mark Wrigton at the Harris Institute naming ceremony in 2002



His Excellency Hisashi Owada, International Court of Justice



Frederick O. Hanser, JD '66, St. Louis Cardinals, right, with Yoshihiko Miyachi, Kobe ORIX Bluewaves



From left: H.R.H. Prince Zeid Ra'ad Al-Hussein of Jordan, with special guest Mrs. Treiman, Whitney R. Harris, and Leila Nadya Sadat



Opening session of International Climate Change Conference organized by Professor Maxine Lipeles, seated, left



2000–2010: Celebrating Our First Ten Years

IT IS WITH GREAT PLEASURE that I welcome you to this special 10th Anniversary Commemorative Edition of the *Harris Institute Magazine*. As I reflect back on the tremendous accomplishments of the Harris Institute's first decade, it seems appropriate to recognize and honor all of those who worked together to establish what has now become one of the premier centers in the United States for research in and the teaching of international and comparative law.



LEILA NADYA SADAT
Henry H. Oberschelp Professor of Law and Director, Whitney R. Harris World Law Institute

With a focus on developing innovative global solutions to real-life problems, the Harris Institute has, during the past 10 years, sponsored more than 75 speakers; held or co-sponsored more than 20 major international conferences in the United States and abroad; assisted with developing and expanding the law school's international curriculum; sponsored a debate series on pressing issues in international law and policy; hosted our first "Ambassador-in-Residence" who had a two-year appointment; began a series of public international law and theory (PILT) roundtables for international law scholars; held meetings for Latin American law scholars and other important comparative law projects; developed programs to support student study and work opportunities abroad, particularly the Dagen-Legomsky Fellowships and the ICC Legal Tools project; and enriched the life of the law school and Washington University more generally.

By Leila Nadya Sadat

Today, the Whitney R. Harris World Law Institute, as it is now called, is building upon this strong foundation. We have continued our very successful programs and have broadened and deepened the scope of our activities. In 2008, we launched the Crimes Against Humanity Initiative, possibly the most significant international rule of law effort undertaken by an academic institution since the Harvard Research Project was published in 1935. The initiative was undertaken to study the need for, and to elaborate, an *International Convention for the Prevention and Punishment of Crimes Against Humanity*. The Convention was developed during a two-year period by the end of which time more than 250 leading scholars and practitioners of international law had been involved in expert meetings and technical advisory sessions convened by the Harris Institute in the United States and abroad. The resulting proposed Convention, in both English and French, will be presented to States in fall 2010 for their consideration.

The Harris Institute could not have achieved so much, so quickly, without the contributions of many individuals, especially our founding director, Stephen Legomsky, the John S. Lehmann University Professor, and his successor, John Haley, the



Hari Osofsky, Washington and Lee University (now University of Minnesota)



Participants at the Crimes Against Humanity Initiative's Experts' Meeting in The Hague



Nuremberg prosecutors, from left, Henry King, Ben Ferencz, and Whitney R. Harris



Participants at the 2008 rededication celebration where the institute was renamed the Whitney R. Harris World Law Institute

Patricia Viseur Sellers, formerly Office of the Prosecutor, International Criminal Tribunal for the Former Yugoslavia



Kathleen Newland, Migration Policy Institute



Delegation of Turkish law deans and professors



(below) Participants at the 2000 opening ceremony for the new Institute for Global Legal Studies in conjunction with the conference, *The United Nations and the Protection of Human Rights*



William R. Orthwein Distinguished Professor of Law Emeritus. I am also deeply grateful to Whitney and Anna Harris for their generous financial and moral support and to Steven Cash Nickerson for his gifts to the Institute and his extraordinary contributions to the Crimes Against Humanity Initiative. You can read more about these wonderful individuals beginning on pages 12 and 6, respectively, of this magazine. I would be remiss not to thank our current dean, Kent Syverud, for his vision and support, my colleagues on the Faculty Advisory Board, and our International Council members for their time and contributions.

Finally, we are grateful for the work of our Cash Nickerson Fellows on the Crimes Against Humanity Initiative (see page 38) including that of B. Don Taylor III, outgoing Harris Institute executive director and Cash Nickerson Fellow, and to our outgoing assistant director, Linda McClain, for her dedication to the Harris Institute and its work over the past decade. This year the Harris Institute welcomes Shelly Ford as

our new administrative coordinator and Yordanka Nedyalkova as our new Cash Nickerson Fellow and associate director. In the coming year, we will host a fascinating debate on the legal and policy issues surrounding the use of unmanned drones in armed conflict, continue to move the Crimes Against Humanity Initiative forward from the research and development phase to implementation, and host numerous speakers on public and private international law topics.

Yet as we honor our past achievements and look forward to the future, our celebration is bittersweet. Last year, Thomas Franck, a founding member of the Institute's International Council and one of the world's great international law scholars, passed away. This year, former Nuremberg prosecutor Whitney R. Harris, himself, after whom the Harris Institute is named, left this world for the next on April 22, 2010. We remember Whitney and his work in this magazine as we continue our efforts to promote his vision of peace, justice, and the rule of law for the entire world. IIII

Francis Deng, former Sudanese Ambassador, left, with then Dean Joel Seligman



The Hon. Patricia Wald, International Criminal Tribunal for the Former Yugoslavia



William Burke-White, University of Pennsylvania, and Valerie Oosterveld, University of Western Ontario



Nigerian attorney Hauwa Ibrahim



The Hon. Christine Van den Wyngaert, International Criminal Court, and the Hon. Stefan Trechsel, International Criminal Tribunal for the Former Yugoslavia



Thomas Franck, New York University



Larry Johnson, U.N. Assistant Secretary-General for Legal Affairs

Negotiating a Better World

By Betsy Rogers

A Visionary Career as Lawyer and Philanthropist



In the future when defenseless populations can live free from fear because corrupt regimes and rogue militias can no longer act with impunity, this new freedom will testify not only to the visionary commitment of legal scholars and diplomats, but also to the generosity of Steven Cash Nickerson, JD '85, MBA '93.

AS A CORPORATE LAWYER, alumnus Steven Cash Nickerson has built a career as an irreplaceable entrepreneur, working in mergers and acquisitions, creating and growing his own companies, and helping clients succeed in new enterprises.

This same zest for creating new ventures has shaped his work as a philanthropist, building an organization to raise funds for prostate cancer research at Washington University's Siteman Cancer Center and, on an even more far-reaching level, financing a worldwide initiative to write and implement a treaty banning crimes against humanity.

True to his entrepreneurial spirit, Nickerson's career path has taken many unexpected turns. When he completed law school in 1985, he took a position as in-house lawyer with Union Pacific Railroad. In 1989, he joined the Chicago law firm of Jenner & Block LLP, making partner just three and a half years later. He then became president and general counsel of a large human resources consulting firm; founded his own HR enterprise, Workforce Strategies, in San Francisco; and since 2003, has been a principal and chief financial officer of PDS Tech Inc., one of the largest U.S. aerospace and information technology staffing firms. With annual revenues of \$360 million, a 750,000-engineer database, and a top-secret security clearance, PDS Tech provides project support to companies fulfilling defense and aerospace contracts.

He especially enjoys human resources work. "There's such a human element to it," he says. "It's very personal, very emotional. You're very involved in people's lives." He finds profound satisfaction in helping people solve problems. "When people come to you, something hurts, and they're kind of stuck. I really enjoy helping people get unstuck, helping them find some solution they haven't thought of."

An early supporter of global legal studies at the law school, Nickerson was the one to whom Leila Nadya Sadat, the Henry H. Oberschelp Professor of Law and director of the Whitney R. Harris World Law Institute, turned for funding assistance. Sadat was in the early stages of a bold initiative addressing crimes against humanity. Nickerson was immediately interested.

"I understood the gap in the law," he says. "An agreed-upon standard of what you can and can't do to your own people doesn't exist. There are laws against genocide, but some atrocities aren't defined as genocide.

"I was really struck by the opportunity to do something that the world needs," Nickerson continues. "Washington University has such tremendous faculty. I thought helping Washington University become more engaged in these efforts would be great for the school and great for the world. But it takes funds to run these kinds of activities." That, he realized, is where he could help. Humanity United and the United States Institute of Peace are also supporting the initiative.

Sadat initially convened a steering committee in spring 2008 with South African Judge Richard Goldstone; war crimes expert M. Cherif Bassiouni; former U.N. Under-Secretary for Legal Affairs Hans Corell; Argentine human rights lawyer Juan Méndez; ICC judge, the Hon. Christine Van den Wyngaert; and Canadian lawyer William Schabas, director of the Irish Centre for Human Rights. In April 2009, the Steering Committee along with a distinguished group of international law experts from around the world met at the law school to begin drafting a Specialized Convention on Crimes Against Humanity. Bassiouni then circulated the first draft. The group convened again at The Hague in June 2009, and in March 2010, at the Brookings Institution in Washington, D.C.

The committee has written, circulated, and debated the proposed treaty—it now goes to United Nations member countries for debate. Nickerson devoutly hopes for its success. "I think we have the right people behind it," he says, "and there's a window that's somewhat open right now."

International support is building for the International Criminal Court, members of the U.S. Congress are discussing criminal sanctions for crimes against humanity, and international tribunals are producing a growing body of jurisprudence.

"Critical to getting it adopted," he contends, "is showing how what we currently have isn't working. After the Holocaust, we said, 'Never again.' But 100 million people have died since we said 'never again.' We have to establish dissatisfaction with the status quo."

The opportunity to work with the committee's scholars and jurists has thrilled Nickerson. "The level of intellect, experience, and passion is unbelievable," he says. And the law school's central role is also thrilling for him. "The Harris Institute has an incredible level of recognition and respect in the international community," he notes. "This is a powerful thing to be coming out of St. Louis, Missouri."

Perhaps the most poignant moment for Nickerson took place at this year's Brookings Institution meeting, where he was given a philanthropy award. Afterward, a jurist from Darfur took his hands in hers and with tears in her eyes told him: "You are birthing a great-grandchild. This will change the world."

As recognition goes, says Nickerson simply, "that's enough. I will never forget that moment." ■■■



Chancellor Mark S. Wrighton, right, presents a philanthropy award to Cash Nickerson.



Preamble to the Proposed International Convention on the Prevention and Punishment of Crimes Against Humanity

“The States Parties to the present Convention,

Conscious that all people are united by common bonds and share certain common values,

Affirming their belief in the need to effectively protect human life and human dignity,

Reaffirming their commitment to the purposes and principles of the United Nations, outlined in its Charter, and to the universal human rights norms reflected in the Universal Declaration of Human Rights and other relevant international instruments,

Mindful of the millions of people, particularly women and children, who over the course of human history have been subjected to extermination, persecution, crimes of sexual violence, and other atrocities that have shocked the conscience of humanity,

Emphasizing their commitment to spare the world community and their respective societies the recurrence of atrocities, by preventing the commission of crimes against humanity, and prosecuting and punishing the perpetrators of such crimes,

Determined to put an end to impunity for the perpetrators of crimes against humanity by ensuring their fair and effective prosecution and punishment at the national and international levels,

Recognizing that fair and effective prosecution and punishment of the perpetrators of crimes against humanity necessitates good faith and effective international cooperation,

Recognizing that effective international cooperation is dependent upon the capacity of individual States Parties to fulfill their international obligations, and that ensuring the capacity of each State Party to fulfill its obligations to prevent and punish crimes against humanity is in the interest of all States Parties,

Recalling that it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes, including crimes against humanity,

Recalling the contributions made by the statutes and jurisprudence of international, national, and other tribunals established pursuant to an international legal instrument, to the affirmation and development of the prevention and punishment of crimes against humanity,

Recalling that crimes against humanity constitute crimes under international law, which may give rise to the responsibility of States for internationally wrongful acts,

Recalling Article 7 and other relevant provisions of the Rome Statute of the International Criminal Court,

Declaring that in cases not covered by the present Convention or by other international agreements, the human person remains under the protection and authority of the principles of international law derived from established customs, from the laws of humanity, and from the dictates of the public conscience, and continues to enjoy the fundamental rights that are recognized by international law,

Have agreed as follows ...

Crimes

“The missing treaty,” is how Leila Nadya Sadat describes it. One that would finally allow all states to prosecute or extradite individual perpetrators of crimes against humanity—widespread or systematic murder, enslavement, torture, rape, or imprisonment of civilian populations. A law that could unite governments worldwide in bringing to justice fugitives who have perpetrated or ordered the commission of mass atrocities.



From left: Evelyn Ankumah, Africa Legal Aid; Elizabeth Borgwardt, Washington University; and Elies Van Sliedregt, Vrije Universiteit Amsterdam

Leila Nadya Sadat, Washington University

By Rick Skwiot

Against Humanity Initiative

UNTIL NOW, NO SUCH international convention has existed. But thanks to the leadership of Leila Nadya Sadat, the Henry H. Ober-schelp Professor of Law and director of the Whitney R. Harris World Law Institute, along with the tireless efforts of renowned international legal scholars and judges, the treaty is becoming a reality.

The culmination of a nearly three-year project known as the Crimes Against Humanity Initiative, and several interna-

tional and domestic experts' meetings, the *Proposed International Convention on the Prevention and Punishment of Crimes Against Humanity* has been drafted in English and translated into French. Cambridge University Press will publish an edited volume, *Forging a Convention for Crimes Against Humanity*, encompassing the papers commissioned by the project, a full text of the treaty, and an accompanying commentary. The initiative's Steering Committee, which recently finalized the proposed convention, is preparing to launch a global

awareness campaign to underscore the need for such a treaty. Ultimately, the goal is to have the convention brought to the United Nations by sponsoring states, where it can be reviewed and serve as the basis for future diplomatic negotiations.

Harkening Back to Nuremberg

THE CRIMES AGAINST HUMANITY INITIATIVE has its roots in Nuremberg, the site of the now famous, post-World



(above) Panel discussion at the Crimes Against Humanity Initiative's Capstone Conference in Washington, D.C.

(left) Crimes Against Humanity Initiative Steering Committee members



Mary Werntz, ICRC



Juan Méndez, International Center for Transitional Justice



Patricia Viseur Sellers, formerly International Criminal Tribunal for the Former Yugoslavia



Payam Akhavan, McGill University



William Schabas, Irish Centre for Human Rights



Carsten Stahn, Grotius Centre of International Legal Studies; the Hon. Richard Goldstone, South African Constitutional Court; and the Hon. Hans-Peter Kaul, International Criminal Court



M. Cherif Bassiouni, DePaul University



The Hon. Daniel Nsereko, International Criminal Court



Clint Williamson, U.S. Ambassador-at-Large for War Crimes Issues

War II International Military Tribunal that tried major German war criminals. Although groundbreaking at the time, that effort did not grow into an international convention on crimes against humanity as some, such as Nuremberg trial counsel Whitney R. Harris, might have wanted.

“Can you imagine the U.S.S.R. signing on to a crimes against humanity treaty in 1945?” asks Sadat. “That wasn’t going to happen. The Soviets voted against the Universal Declaration of Human Rights in 1948, themselves responsible for the commission of widespread and systematic violations of human rights under Stalin.” And it wasn’t just the Soviets, Sadat adds. Other countries, including the United States, were content with the narrow definition of genocide in the Genocide Convention and had no appetite for robust enforcement of the Nuremberg principles.

But Harris, who died on April 22, 2010, at age 97 and who had endowed his namesake institute in 2001, saw a need for the proposed convention. Indeed, Harris’s final, taped remarks supporting the Crimes Against Humanity Initiative were delivered at the March 2010 conference, *Forging a Convention for Crimes Against Humanity*. He addressed conference participants at the Brookings Institution in Washington, D.C., just a month before his death.

The meeting was the capstone conference for the initiative, which is being funded by a gift from alumnus Steven Cash Nickerson, JD ’85, MBA ’93, as well as by grants from Humanity United and the United States Institute of Peace.

“I would like to thank the members of the Crimes Against Humanity Initiative Steering Committee, chaired by Professor Leila Sadat, for the selfless work they have done to advance the cause of world peace, and for their contribution to this effort,” Harris noted in his remarks. “Here, today, you are considering [a] pillar of the Nuremberg legacy—crimes against humanity. Civilization can no longer tolerate the commission of [these] crimes.”

Closing the Gap in International Law

WHILE THE GENEVA CONVENTIONS of 1949 provide rules for the conduct of armed conflict, and the 1948 Genocide Convention addresses that particular crime, no overarching treaty on crimes against humanity currently exists, Sadat notes.

Sadat stresses that the Genocide Convention “is generally of limited utility” in addressing most cases of mass atrocity. “Often, as in the case of the Former Yugoslavia, the public debate centers on the legal technicalities of whether

genocide has taken place—as opposed to focusing upon the victimization resulting from mass atrocities committed against a civilian population,” she explains. “The Crimes Against Humanity Initiative refocuses on the victims of atrocity crimes and moves away from legal characterizations that are of little benefit either in preventing the crimes or punishing the perpetrators.”

This was true, for example, with respect to the slaughter of millions of Cambodians by the Khmer Rouge regime under Pol Pot, which probably did not fall within the definition of genocide in the Genocide Convention. Indeed, although one recent study estimates that there have been as many as one million perpetrators of crimes against humanity in the past half century, there have been fewer than 1,000 prosecutions.

Additionally, the proposed treaty would provide a much needed enforcement vehicle that states could use to cooperate with each other in preventing and punishing crimes against humanity through extradition proceedings or prosecutions in their own national courts. “Often atrocity crimes are committed along with financial crimes,” Sadat says. “The individuals committing these crimes have enriched themselves and are able to flee the countries in which the crimes were committed and live quite comfortably—and with impunity—in their chosen



Whitney R. Harris, left, and Hans Corell, former U.N. Under-Secretary-General for Legal Affairs

country of refuge. The Crimes Against Humanity Convention obligates states to either try these criminals or send them elsewhere for prosecution.”

Sadat notes that the Crimes Against Humanity Initiative is “one of the most sophisticated and challenging endeavors in which any law school has ever engaged. The convention is designed to be an influential and important contribution to international law, even more so than the 1935 Harvard law research project to draft international treaties. We hope that states will take up the challenge of using this instrument to negotiate and adopt an International Convention on the Prevention and Punishment of Crimes Against Humanity.” IIII

Steering Committee Adopts Text of Proposed Convention

THE CRIMES AGAINST HUMANITY Initiative Steering Committee has been guiding the project from its inception. Chaired by Leila Nadya Sadat, the committee is composed of M. Cherif Bassiouni, the Distinguished Research Professor of Law at DePaul University College of Law and founder and president emeritus of the International Human Rights Law Institute; Hans Corell, former Under-Secretary-General for Legal Affairs and legal counsel of the United Nations; Richard J. Goldstone, former chief prosecutor of the International Criminal Tribunals for the Former Yugoslavia and for Rwanda; Juan E. Méndez, visiting professor, Washington College of Law, American University, Washington, D.C.; William A. Schabas, director of the Irish Centre for Human Rights, National University of Ireland, Galway; and Christine Van den Wyngaert, judge for the International Criminal Court.

In August 2010, the Steering Committee approved the text of the proposed convention. As finalized, the proposed convention:

- Defines “crimes against humanity” as acts committed as part of a widespread or systematic attack directed against any civilian population, pursuant to a State or organizational policy,

including murder, extermination, enslavement, deportation, or forcible transfer of population; imprisonment, torture, rape, sexual slavery, enforced prostitution, forced pregnancy, and enforced sterilization; persecution against groups on political, racial, ethnic, cultural, religious, or gender grounds; enforced disappearance; and apartheid;

- Provides for individual criminal responsibility for crimes against humanity, potentially including heads of state and elected or appointed officials, and includes the possibility of liability for legal entities, as well;
- Institutionalizes state cooperation in preventing, investigating, prosecuting, and punishing crimes against humanity, including extradition proceedings, transfer of criminal proceedings, and enforcement of the effects of States Parties’ penal judgments;
- Obligates states to enact legislation to give effect to the convention; and
- Establishes a mechanism for United Nations administration, assistance, and coordination.

For more information on the Crimes Against Humanity Initiative, visit: law.wustl.edu/crimesagainsthumanity. IIII



A session of the Crimes Against Humanity Initiative’s St. Louis Experts’ Meeting



Participants in the Crimes Against Humanity Initiative’s St. Louis Drafting Session



Participants in the Crimes Against Humanity Initiative’s St. Louis Experts’ Meeting

Whitney R. Harris:

A Personal Tribute

By Leila Nadya Sadat

MR. WHITNEY R. HARRIS died on April 22, 2010, at the age of 97, at his home in St. Louis, Missouri. Whitney served as trial counsel at the trial of the major German war criminals before the International Military Tribunal at Nuremberg from August 1945 to the conclusion of the trial on October 1, 1946. He was the last surviving prosecutor on Justice Jackson's team. He was also an extraordinary individual

who had led an extraordinary life, a great friend, and a wonderful benefactor of the Institute that bears his name and that I have the honor to direct. I will miss him very much.

Whitney's role at Nuremberg is well-known. He was a line officer in the U.S. Navy during World War II. Toward the end of the war, the Navy assigned him to the Office of Strategic Services, which sent him to Europe to investigate Nazi war crimes. He joined the staff of Robert H. Jackson, the Chief Prosecutor for the United States for the trial of the major

Nazi war criminals, and moved with the first contingent of prosecutors to Nuremberg in 1945. He was assigned to prosecute Ernst Kaltenbrunner, chief of the Reich Main Security Office and two organizational defendants, the SD and the Gestapo. He obtained convictions against all three defendants and was awarded the Legion of Merit for his efforts.

Whitney's experiences at Nuremberg as a young lawyer made an indelible impression upon him, and he quickly emerged as one of the major spokesmen for the Nuremberg legacy. He wrote extensively about

Tribute Excerpts in Honor of Whitney R. Harris

Tributes to Whitney R. Harris poured in from around the globe with the news of his passing. In addition to his contributions to the rule of law, many took a moment to share personal reflections. For additional tributes, visit law.wustl.edu/news/inmemoriam.aspx.

"In my capacity as founding director of what is now the Whitney R. Harris World Law Institute, I had the privilege of working with Whitney during those early years of the Harris Institute and getting to know him and his loving wife, Anna. By now it has become trite to observe what an inspiration Whitney was to all of us, but that is indeed the case—a larger-than-life figure with limitless talent, a big heart, and a self-effacing, down-to-earth personal style that would

have given no indication of his extraordinary accomplishments. But with all that, I have to say that my single most vivid memory was of his 90th birthday party, where Stan Musial played 'Take Me Out to the Ball Game' for Whitney on his harmonica, and where Whitney's son admirably recounted how, the day before, the then 90-year-old legend had played 18 holes of golf, followed by dinner, dancing, and swimming, before

unsuccessfully trying to convince his exhausted friends and family to go out for some walking. It was both touching and uplifting to see the mutual love, respect, and admiration that Whitney and Anna so obviously felt for one another. As for me, I feel proud to be one of those whom Whitney called 'little buddy.'"

Stephen H. Legomsky

John S. Lehmann
University Professor,
Washington University
School of Law

"... Just before Whitney's 90th birthday, then dean of the law school, Joel Seligman, asked if I would be willing to succeed Steve Legomsky as the director of the newly named Whitney R. Harris Institute for Global Legal Studies. ... Whitney seemed to revel in the diverse seminars and conferences we organized and sponsored, whether comparison of professional baseball in the United States and Japan, Mitts Across the Pacific, or the debate over the return of the Elgin marbles and other cultural artifacts in the conference, Imperialism, Art & Restitution. I was equally privileged to have been able to work with him as he both inspired and led the planning effort for the last conference of



(left) Whitney R. Harris, right, at the Nuremberg prosecutions



(left, below) Whitney R. Harris with Robert Jackson, left

his role at Nuremberg, and in 1954, published the first definitive book on the trial, *Tyranny on Trial: The Evidence at Nuremberg*, which the *New York Times Book Review* described as a “masterly and meticulous condensation” of the documentary evidence and “a book of enduring importance.” I can attest to the same, having often relied upon the book in my own work. Two subsequent editions of the book were published, which has since been translated into German.

Whitney and I also shared a common understanding of the need for a permanent International Criminal Court. He

was an NGO delegate to the 1998 Rome Conference for the Treaty establishing it, as was I. He represented the committee of Former Nuremberg Prosecutors at the Rome Conference and championed the view that the rule of law must displace the rule of force, and that establishing a permanent International Criminal Court would confirm the principles laid down by the Nuremberg Tribunal half a century earlier. One should not underestimate the effect that the living witness of these former Nuremberg prosecutors had upon the 165 governments and 250 NGOs present in Rome. Whitney and the others had witnessed unspeakable horrors, but saw these terrible events as a clarion call to action, not as a rationale

my term—the Celebration of the 60th Anniversary of the Nuremberg Judgment. ... Whitney put heart and soul into this conference, which by all accounts was one of the most substantive, as well as memorable, of all of the Nuremberg Judgment celebrations. I was privileged—indeed, favored—to have known Whitney, to have worked with him, to have shared time with him and Anna, and, above all, to have had a glimpse of his kindness, generosity, and the good will he extended so graciously to all around him.”

John O. Haley
William R. Orthwein
Distinguished Professor
of Law Emeritus,
Washington University
School of Law

“... Whitney Harris was, in the world of law, one of the most known Americans in the world. Elisabeth and I have come from The Hague to St. Louis to convey to you, Anna, but also to all present and indeed to all Americans who knew Whitney, the sympathy, the respect, and the admiration of the 18 Judges of the International Criminal Court, from all regions of the world, for Whitney R. Harris. It was one, just one of the many exceptional talents of Whitney that he had a particular ability to inspire and to encourage others in the eternal quest for a more just and better world. ...”

The. Hon. Hans-Peter Kaul
Judge, Second Vice President,
International Criminal Court

*“... With Whitney gone, I am the lone Nuremberg survivor holding up the Nuremberg banner. I have entered my 91st year, and I know that we are going to need all the help we can get to remove the current impunity from the ICC Statute. Whitney would join with me in expressing appreciation for your help in supporting that noble goal. The highest tribute one can pay to the memory of my friend and colleague, Whitney Harris, is to cite his own conclusion about the Nuremberg trial. In his book, *Tyranny on Trial*, he quotes the IMT decisions that to initiate a war of aggression is the supreme international crime and that law applies equally to victor and vanquished. In Whitney’s own concluding words, ‘The initiating and waging of aggressive war*

is now indisputably criminal. No more important decision was ever made by any court.’ May Whitney’s wisdom and vision guide us all to future world peace.”

Benjamin B. Ferencz
Chief Prosecutor,
Einsatzgruppen Case

“In recent years, Whitney Harris devoted his energies primarily to speaking, writing, teaching, and embodying the past, the progress, and the hopeful future of international law and justice. He was a strong supporter of modern international tribunals, including the court for the Former Yugoslavia, the court for Rwanda, and the International Criminal Court. As Whitney knew best and explained powerfully, each of those tribunals, and the world progress they can



Whitney R. Harris at a Crimes Against Humanity Initiative session

for their own despair. Whitney later wrote of the importance of the Nuremberg trials and the Rome Conference that “Nuremberg and Rome stand against the resignation of humankind to its

self-debasement and self-destruction. The achievements of that great trial and historic conference in elevating justice and law over inhumanity and war give promise for a better tomorrow.”

This summer, between 1,500 and 2,000 delegates will gather on the shores of Lake Victoria, in Kampala, Uganda, for the first Review Conference of the International Criminal Court. Although Whitney will not be physically present at that event, his spirit will, as each of us tries to carry on his work in our own way.

Whitney kept the Nuremberg dream alive through his writings and his advocacy, and later, to all of our great benefit, through his philanthropic generosity. In 1980, he established the Whitney R.

Harris Collection on the Third Reich of Germany at Washington University. In 2001, he endowed the Whitney R. Harris Institute for Global Legal Studies at Washington University School of Law. In 2008, he and Anna Harris endowed the Institute’s “World Peace Through Law Award” at a ceremony during which the Harris Institute’s name was changed to the Whitney R. Harris World Law Institute, the name it bears today.

Whitney loved the Harris Institute and often came in to spend time there. He had a warm relationship with all the staff, and was especially supportive of the directors, including myself. He participated actively in our conferences, lectures, and debates, and made himself available to our students. He entranced

embody and assist, grew from and builds upon the principles and achievements of Nuremberg.”

John Q. Barrett
Professor, Robert H. Jackson Center Inc.

“I am very sorry to hear the sad news. Whitney stood very firm on the video-clip that captured his words for the Crimes Against Humanity conference, and it is nice for us all to have this beautiful last image of him to remember. I am so pleased that he lived to see the results of the conference. We will all remember him as a remarkable personality and a charming, warm person whom we will all miss.”

The Hon. Christine Van den Wyngaert
Judge, International Criminal Court

“Whitney Harris lived through a period of great historic importance in which he played a significant role. Decades from now, we will reread the proceedings of the Nuremberg trial, or see him in the films of it, and recall his charm and dignity. He was a lucky man to have had the opportunity to make such a contribution. We owe him a great debt for having spent the rest of his life both commemorating and building upon that great achievement.”

William Schabas
Director, Irish Centre for Human Rights, National University of Ireland, Galway

“It was one of the privileges of my professional career to know and befriend Whitney Harris. We first met in 1995 in Nuremberg

at the seminar held by the Mayor of Nuremberg to commemorate the 50th anniversary of the Nuremberg Trials in which Whitney played a leading role. I will never forget Whitney’s wonderful voice, resonating in the very courtroom where the trial of the Nazi leaders was held, quoting the memorable words of Justice Robert Jackson. No one present was not moved. Whitney never ceased to work for international justice and the ending of impunity for war criminals. It was also a privilege to work with Whitney on the still ongoing project to draft an International Convention on Crimes Against Humanity. Whitney lived a full and productive life until the end. I send my heartfelt condolences to Anna and the other members of his family. I know they will find

comfort in the love and life’s work of dear Whitney.”

The. Hon. Richard J. Goldstone
Retired Justice, Constitutional Court of South Africa; Former Chief Prosecutor, U.N. International Criminal Tribunals for the Former Yugoslavia and Rwanda

“I was saddened to hear about the death of your beloved founder and colleague, Whitney Harris. I truly extend my sympathy to his wife and to the Harris Institute. I’m sure that the foundation, which he squarely built, has trembled during these last few hours. I want to express what an honor it was for me to be in the presence of such a forefather of international legal practice.”

Patricia Viseur Sellers
Humanitarian Law Consultant, International Criminal Law

the students with his presentations, telling them about his experiences as a former Nuremberg prosecutor, discussing with them the issues of the day, and patiently answering their questions. They would often tell me that their sessions with him were one of the highlights of their law school careers.

Whitney was always kind and gracious, elegant and distinguished, witty and articulate. He had a beautiful baritone voice and a manner of speaking that was rivet-



Whitney and Anna Harris

ing, and remained so, right up until his passing. Indeed, in his final remarks at a Harris Institute event (which were taped in St. Louis on February 24, 2010 and delivered at a Harris Institute Conference, *Forging a Convention for Crimes Against Humanity*, held at the Brookings

Institution on March 11, 2010), his voice was strong, his bearing proud, his spirit indomitable.

Whitney inspired all of us, including myself, to do our best. He fully supported

our Crimes Against Humanity Initiative, perhaps the most ambitious undertaking for international rule-of-law development by an academic center since the *Harvard Research Project* was published in 1935. He understood the need to continue to reinforce and build upon the Nuremberg legacy and to complete the work that was begun in 1945. He also recognized the importance of not becoming complacent about the future of international criminal justice, given the continuing presence of terrible human suffering on the Earth. Indeed, Whitney had no Pollyannaish naiveté about the world; he understood the capacity of humans for evil, just as he believed in their penchant for good.

In an essay titled “This I Believe: Human Existence Is in Peril,” which aired

“... Of particular note was Whitney’s support for the annual International Humanitarian Law Dialogs held at the Chautauqua Institution each year, a place where the current and former international prosecutors, from Nuremberg to the International Criminal Court, meet to discuss key issues in the field of modern international criminal law. Whitney attended the first two and even wrote a poem in commemoration of the first dialog. I will end this short humble remembrance with parts of that poem that he read to us in August of 2007: ‘The tyrant must be forced to end his tyranny. The aggressor must be punished for his aggressions. And law, not force, must rule the world.’ The Romans had a phrase: ‘He who has friends has treasure.’ You

were a rich man indeed my friend. Rest in perfect peace, Whitney.”

David M. Crane

Former Chief Prosecutor, Special Court for Sierra Leone; Professor, Syracuse University College of Law

“I am very sorry to hear this news, but I am grateful to you for letting me know. My warm thoughts to the family, to you, and to colleagues at Washington University. He was an amazing guy, and they just don’t make them like that anymore.”

Richard Dicker

Director, International Justice Program, Human Rights Watch

“Meeting Whitney was one of the big and unforgettable moments of my work on international criminal

justice—humbling and inspiring at once. He will be missed, and we will all treasure his memory.”

Ambassador Christian Wenaweser

Permanent Representative, Principality of Liechtenstein; President, Assembly of the States Parties to the International Criminal Court

“I join the rest of you in expressing true sadness indeed at the passing of Whitney R. Harris ... A brilliant mind and undoubtedly, one of the monuments of international criminal justice. He has contributed greatly and has inspired so many of us to continue to plough on. May his soul rest in perfect peace.”

Fatou Bensouda

Deputy Prosecutor, International Criminal Court

“My sympathy to the family and friends of the late Whitney Harris. He was a great man, lawyer, and writer.”

Ambassador Zvonimir Paul Separovic

Former Minister of Foreign Affairs, Republic of Croatia; Former Croatian Ambassador to the United Nations

“Let me join our colleagues in expressing my deepest regrets over the loss of a pillar of international criminal justice. He may have departed from us, but his memory will linger in our hearts and his works will memorialize in the annals of history. It is owed to his memory for us not to relent in the quest for justice for all. May his soul rest in perfect peace.”

Joseph F. Kamara

Deputy Prosecutor, Special Court for Sierra Leone

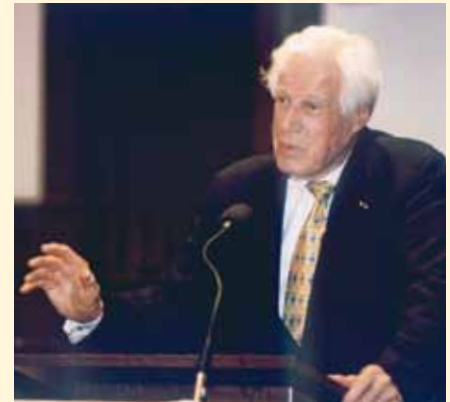


Crimes Against Humanity Initiative participants pay tribute to Whitney R. Harris.

on National Public Radio's "All Things Considered," he stated, "The challenge to humanity is to establish and to maintain the foundations of peace and justice upon the Earth for the centuries to come that God has allotted him to live upon this

planet." He closed by saying, "I believe there is a God; I believe God is merciful and just, but if man desires to destroy himself, I believe God will not save him."

Whitney Harris is survived by his wife, Anna, whom he loved dearly, by devoted family, by friends and colleagues, and by the students he touched at Washington University and around the world. For those of us at Washington University and at the Whitney R. Harris World Law Institute, we are saddened by the thought that Whitney will never visit with us again. Yet we cherish the many years we had together, and we are ready to carry on the important work that Whitney began so many years ago in Courtroom 600 in the Palace of Justice



Whitney R. Harris at an international and humanitarian law conference

at Nuremberg. Whitney Harris may have passed from this world to the next one, but his spirit and his legacy live on and will endure. IIII

"Sad news indeed. A sole and important legal link to the past is now gone. You phrased it well in your in memoriam. Keep up all the good work!"

Krister Thelin
Member, United Nations
Human Rights Committee

"It is with a feeling of profound admiration and gratitude that I join in the many praises expressed so far in memory of the late Mr. Whitney R. Harris. His contribution to the development of the international criminal law and justice system was enormous and spanned over 65 years—pioneering the prosecution of war crimes in Nuremberg as a young lawyer and leading its first case, where he was confronted with the full horrors of the atrocities committed by the Nazis. Not only was he

a talented lawyer, teacher, and writer, but he was also a brilliant orator, and this combination convinced his audiences—generations of students, lawyers, diplomats—of the necessity to build an international judicial system to promote justice and law for the future benefit of mankind. ..."

Silvana Arbia
Registrar, International
Criminal Court

"I drew inspiration from Whitney Harris through the years. He was my beacon into the past. I will forever remember his fortitude, wisdom, commanding voice, and gracious smile. Once, while in St. Louis, I dropped by his home simply to say hello. He was battling cancer, and, at first, I thought I had made a terrible mistake. But he smiled, invited me

into his grand study, and held forth for an hour talking about the significance of Nuremberg in his life and the need to keep waging the good fight for international justice. One of the highest honors of my life was when Whitney told me how much he admired what I had done in our common cause. Coming from him, that was all I needed to stay the course. I mourn his passing, but I celebrate his noble life."

The. Hon. David Scheffer
Former U.S. Ambassador-at-Large for War Crimes Issues

"... Whitney's remarkable life's work in service of humanity will truly go on for decades to come as the scholars and prosecutors he has so deeply inspired (myself certainly included!) continue to fight for peace

through law, and that it will go on forever via the extraordinary institute that bears his name."

Eli Rosenbaum
Director, U.S. DOJ Office
of Special Investigations

"Just this past week I was talking to an audience in the course of Holocaust remembrance and mentioned how privileged I had been to meet Whitney and how impressed I was with his unflinching dedication to justice. It is very sad news indeed. I look forward to honoring Whitney's memory in Kampala, and in the meantime, please extend my deepest condolences to his family."

Robert Petit
Former Chief Co-Prosecutor,
Extraordinary Chambers in
the Courts of Cambodia

Justice for East Timor and Beyond

By Timothy J. Fox

FOUR HUNDRED MILES north of Australia, the island nation of East Timor is “out of sight” and “out of mind” for the average American. However, it is never far from the heart and mind of Leila Nadya Sadat, the Henry H. Oberschelp Professor of Law and director of the Whitney R. Harris World Law Institute.

In 1995, Sadat began attending meetings leading up to the creation of the International Criminal Court (ICC). The ICC was established in 1998 by the Rome Statute of the International Criminal Court—a treaty drafted to create an international court that would seek justice for victims of war crimes and other crimes against humanity.

The year after establishment of the ICC, East Timor ended its nearly quarter-century occupation by Indonesia. Experts estimate that between 60,000 and 200,000 Timorese were killed during those tumultuous years. Countless more were raped, tortured, or imprisoned.

Armed with her understanding of the ICC and the challenges of prosecuting perpetrators of war crimes, Sadat took on the grim task of documenting the atrocities committed at the hands of the Indonesian forces for special panels created to bring the guilty to justice.

“I was asked to address an important legal issue—the question of *ne bis*

in idem, more commonly referred to as the problem of ‘double jeopardy,’” she explains. “The problem was that Indonesians had allegedly committed crimes, including terrible massacres, in East Timor. However, it was thought that the Indonesian government was trying to shield its nationals from prosecution by trying them in Indonesia before the special panels in East Timor could act.”

More recently, Sadat served as a special adviser to the Timorese government during negotiations that led up to the first Review Conference on the Rome Statute in Kampala, Uganda.

The conference brought together the 111 nation-states and many non-governmental organizations (NGOs) that signed the Rome Statute (the United States, unfortunately, is not among them, Sadat notes). Its purpose was to consider changes to the Rome Statute and to evaluate its “implementation and impact.”

“East Timor is a small nation that had suffered from war crimes and crimes against humanity; it was a great supporter of the ICC,” Sadat says. “The country had an interest in making sure that the court continues to be impartial, independent, and effective.”

Sadat, who has been a member of the Washington University law faculty for 18 years, says that her interest in public international law, international criminal law, and human rights spans her career, including her work as a law clerk for both of France’s supreme courts and an attorney in Paris.

“I had practiced law and taught in France first,” remembers Sadat. “Early in my teaching career, the French courts were involved in several interesting cases regarding crimes against humanity committed during World War II.”

One of those cases was that of Paul Touvier, a radically anti-Semitic “small-time thug”

under the French Vichy government whose best defense was that he had killed “only” seven people.

Cases like Touvier’s, the famous Nuremberg trials, and the 1992 outbreak of war in Bosnia set the stage for the ICC, Sadat says. But at that time, she did not know that she would soon meet the late Whitney R. Harris and one day become director of the Harris Institute.

“I’m an eternal optimist,” says Sadat. “I believe that much can be done to make the world a safer, saner place—the fall of the Soviet Union, for example, shows that the transformation of a society is possible given the right conditions and the right pressures. The ICC presents a very powerful idea—that leaders can be held accountable for their actions. It is an idea whose time has come.”

Sadat believes that the world today faces three distinct challenges: environmental degradation and climate change; nuclear weapons; and government accountability.

Regarding the first challenge, Sadat remembers talking with Professor Oliver Houck when she was a law student at Tulane University. “He was sounding the alarm about global warming 25 years ago,” she says. “Environmental degradation is a problem because people don’t see the Earth as a living thing that we need to protect.”

Similarly, nuclear arms control seems beyond the reach of the everyday person, she notes. But Sadat believes that government accountability offers a more tangible opportunity for hope. “If a government leader takes part in massive transgressions of human rights, there are now legal tools, like the ICC, to make people responsible for those actions,” she says. “Society needs rules, institutions to provide the rules, and institutions to enforce the rules. Enforcing human rights is a challenging problem, but not an insurmountable one.” ■■■



Human Rights Expert Bassiouni Receives World Peace Through Law Award

By Terri McClain

“The struggle for peace, law, and justice in the world is eternal.”

Whitney R. Harris, February 8, 2001

M **CHERIF BASSIOUNI**, Distinguished Research Professor of Law at DePaul University College of Law and founder and president emeritus of the International Human Rights Law Institute, received the Whitney R. Harris World Law Institute’s 2010 World Peace Through Law Award at a special dinner ceremony held on March 11 in Washington, D.C.

“The award was established in 2006 to recognize individuals who have achieved great distinction in the field of international law and international relations,” says Leila Nadya Sadat, the Henry H. Oberschelp Professor of Law and director of the Harris Institute. “It is bestowed upon an individual who, by his or her work and writings, has considerably advanced the rule of law and thereby contributed to world peace.”

Bassiouni is the author of 27 books, the editor of 44 books, and the author of more than 200 articles on a wide range of legal issues, including international criminal and human rights law.

He has served the United Nations in numerous capacities since 1975, including as independent expert on human rights in Afghanistan (2004–05); chair-



From left: Dean Kent Syverud, M. Cherif Bassiouni, and Leila Nadya Sadat

man of the Security Council’s Commission to Investigate War Crimes in the Former Yugoslavia (1992–94); 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.

He also has served as a consultant to the U.S. Departments of State and Justice.

In 1999, he was nominated for the Nobel Peace Prize for his work in the field of international criminal justice and for his contribution to the creation of the International Criminal Court. His many international awards include The Hague Prize for International Law in 2007, the Grand Cross of the Order of Merit (Commander) from Germany and the French Legion d’Honneur (Officier), both in 2003. He has held the position of non-resident professor of criminal law at the University of Cairo since 1996.

The award committee voted unanimously to honor Bassiouni for many reasons, says Sadat, “including his extraordinary work as a leader in the field of international justice and a champion of human rights for all human beings everywhere. He has been a leading figure in the establishment of the International Criminal Court and an important voice in calling for the development of an international instrument to combat crimes against humanity.

“His 1994 article, ‘Crimes Against Humanity: The Need for a Specialized Convention,’ was inspirational and sowed the seeds for the current success of the Harris Institute’s Crimes Against Humanity Initiative,” continues Sadat. “Professor Bassiouni has been a great friend and supporter of both the Harris Institute and Whitney R. Harris for many years, as well as an inspiration to all of the staff at the Harris Institute. He has been tireless in his work as a member of the Crimes Against Humanity Initiative’s Steering Committee, and we are especially grateful for his extraordinary leadership in the drafting of the *International Convention on the Prevention and Punishment of Crimes Against Humanity*.”

The World Peace Through Law Award ceremony was held during a March 11–12, 2010 conference for the Crimes Against Humanity Initiative. The conference, held at the Brookings Institution in Washington, D.C., brought together top international criminal law experts to unveil and discuss a draft of the *International Convention on the Prevention and Punishment of Crimes Against*

Humanity—the culmination of the Harris Institute’s nearly three-year Crimes Against Humanity Initiative that commissioned papers and convened meetings in St. Louis and The Hague involving academics, practitioners, international judges, and other representatives to study international law regarding crimes against humanity.

At the award dinner, Bassiouni delivered an address on “Crimes Against Humanity: The Case for a Specialized Convention.” Bassiouni cited the WWI Armenian genocide, for which Turkish officials were never prosecuted, despite an international outcry. He noted that after WWII, at Nuremberg and Tokyo, the 46 persons indicted were prosecuted primarily for crimes against peace and war crimes rather than crimes against humanity. It was not until the 1990s, when the United Nations established the

International Criminal Tribunals for the Former Yugoslavia and Rwanda, that crimes against humanity came to the forefront of international legal proceedings.

This year’s award was endowed by a generous gift from Whitney and Anna Harris. The institute is named in honor of philanthropist Whitney Harris, who died in April 2010 at age 97. He was the last surviving prosecutor of the post-World War II Nuremberg Trials, which set an important precedent for the establishment of an International Criminal Court.

Previous Peace Through Law Award recipients are Judge Philippe Kirsch, former President of the International Criminal Court, and Justice Richard Goldstone, former Chief Prosecutor of the International Criminal Tribunals for the Former Yugoslavia and Rwanda. IIII



The Hon. Richard Goldstone



The Hon. Philippe Kirsch

A Year in The Hague

By Amitis Khojasteh, JD '08



WHEN I FIRST arrived in The Hague, I could not have imagined that a year later I would be sitting

in the courtroom among the legal officers as the historic judgment in the *Popović et al.* case was handed down. This was the largest trial to date at the International Criminal Tribunal for the Former Yugoslavia (ICTY). Seven former high-ranking Bosnian Serb military and police officials were convicted of a range of crimes including war crimes, crimes against humanity, and genocide related to the attacks on Srebrenica and Žepa.

I began my internship in Trial Chamber II of the ICTY in June 2009. My responsibility was to assist the judges and legal officers of the Chamber. Initially, my duties included performing research, assisting in drafting legal documents such as decisions on motions,

preparing witness summaries, and attending court proceedings.

Time away from work was spent with other interns who have become fast friends. I visited Rotterdam, Delft, Amsterdam, and even Paris. We enjoyed the beach at Scheveningen, visited the Peace Palace and museums, participated in the Dutch nightlife, and often simply spent afternoons talking and laughing over coffee. The beautiful setting of canals and flowers contrasted sharply with the serious nature of my work at the ICTY.

As the trial proceedings concluded, my role on the team shifted. A shortage of legal officers led to my having a remarkable opportunity to participate in the drafting of the judgment. During the next few months, I found myself completely immersed in the horrific events that occurred in Eastern Bosnia in July 1995, and particularly, the acts of one of the accused during these events as I studied exhibits, trial transcripts, and the final briefs of the parties. I soon found myself becoming more and more comfortable in discussing, analyzing, and evaluating evidence, the arguments of the parties, and complex legal issues with the legal officers and judges.

My days were filled with legal research; studying maps, intercepts, and combat reports; and reading the accounts of witnesses, including individuals who managed to survive mass executions. Their testimonies, in particular, were at once horrifying and heartbreaking. It was not unusual to work late into the night and on weekends.

When my internship was scheduled to end in December 2009, I was asked to

extend my stay at the Tribunal to continue my work on the judgment drafting. Subsequently, a short-term contract enabled me to stay on until the completion of the judgment and changed my status from intern to temporary staff member.

One of my most significant experiences was attending the judges' deliberations on the judgment. These rare glimpses into what occurs behind closed doors after the trial proceedings have ended reveal an aspect of the international criminal justice system that few people have the opportunity to experience and witness firsthand. I had read and studied ICTY cases in law school, and it seemed almost unbelievable that within only two years after graduation, I was now participating in such a case. It was a profound experience to sit at a table with the judges as they debated and discussed issues and on occasion asked for my opinion.

Through my course work at Washington University School of Law and as a research assistant for Professor Leila Sadat, I had gained a strong foundation in international criminal law. But now I was no longer working on hypothetical situations and legal issues—I was actually applying law to real events and people. I was no longer only studying or analyzing jurisprudence but contributing to it and to the historical record on the Srebrenica genocide.

As someone who is passionate about international justice and human rights, I am grateful to have had this remarkable opportunity. Living in The Hague and working at the ICTY on the *Popović et al.* case was truly a once-in-a-lifetime experi-



Scenes from Amitis Khojasteh's year in The Hague, including views of the tribunal building, a group of interns, and a court proceeding



ence. I was very fortunate to be in the unique position to see the case to its conclusion and even more fortunate to have been able to work with the extraordinary individuals of the Chambers staff and the judges on the case. Their dedication and hard work to bring this painful chapter in world history to a just close are truly inspiring. ||||

An American in Paris

By Matthew M. Bunda, JD '06



(right and opposite)
Scenes from a balcony and terrace at the Cleary Gottlieb office where Matthew Bunda worked in Paris

I CAN VIVIDLY RECALL my somewhat daunting, yet very cut-and-dried introduction to life in Paris: “If you lose these keys or close this door behind you without them, and it’s on the weekend or after-hours, you’re stuck. You will have to stay with friends for the night or for the weekend,” the leasing manager said while showing me how to operate the complex, automatic lock mechanism that stood between me and what would be my apartment in Paris for the next three months.

“But I don’t know anyone,” I said.

“Then I guess you would have to stay in a hotel,” she responded.

“But what if I get locked out without my wallet or phone or anything?” I said.

“Well I guess it’s important not to get locked out then, isn’t it?” she replied.

I was standing at the door of my fourth-floor, walk-up in the northeast corner of the Eighth *Arrondissement* of

Paris, speaking with a British woman from a French company that leases corporate apartments to Americans working temporarily in Paris. It was September 16, 2008, and I was a third-year associate in the New York office of Cleary Gottlieb Steen & Hamilton LLP. The firm had asked me to spend the fall in the Paris office to join a team working on arbitrations in which our firm represented the Russian Federation against a group of claimants owning parts of Yukos, the massive Russian oil conglomerate. The claimants sought to recover up to \$100 billion from Russia under rights they purported to have under the Energy Charter Treaty of 1994, a multilateral treaty intended to facilitate Western investment in former Soviet Bloc countries.

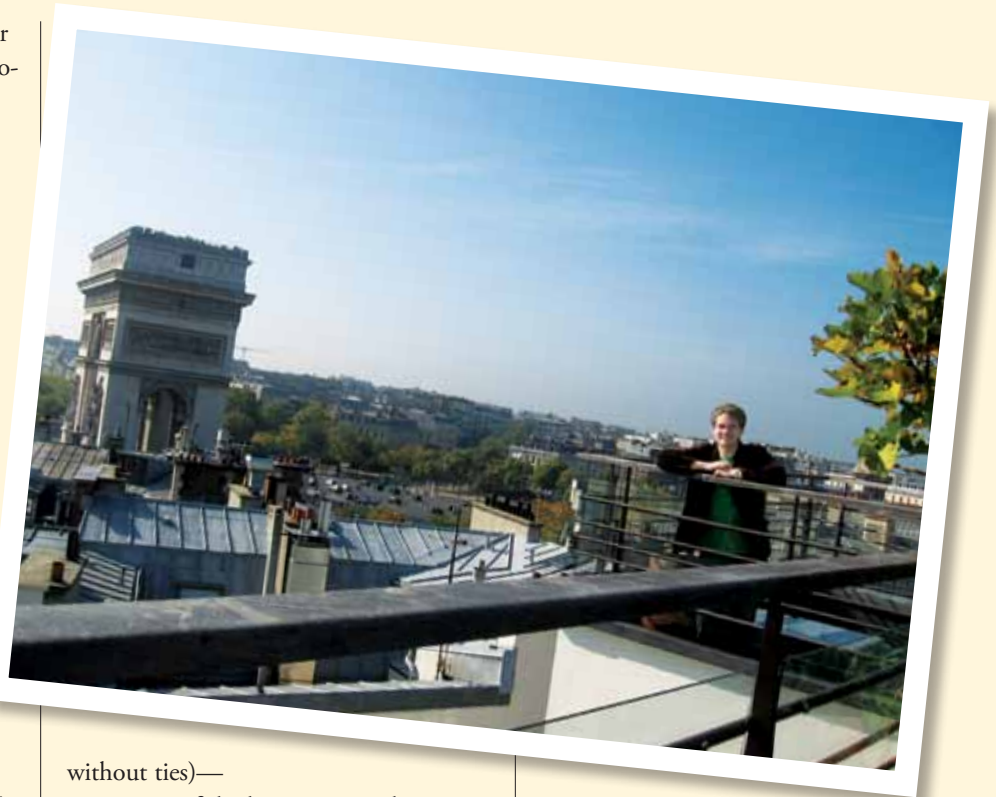
The tribunal had scheduled a two-week hearing on whether it had jurisdiction to hear the claims for November 2008, and our firm was in full swing preparing for it, with lawyers from six (of our 12) offices involved—Paris, New York, London, Washington, D.C., Rome, and Moscow. Two junior associates from New York, including me, would work with partners in New York, Washington, D.C., and London, and with the team in Paris in preparing primarily for the witness-testimony portion of the hearings, in which law professor experts on the Energy Charter Treaty and the Russian legal system would testify, as well as several QCs from England on the law governing Channel Islands trusts (relevant for reasons too complicated to explain here!).

Although I had spent much of my previous time at Cleary working on securities litigation in federal court in New York, the Yukos assignment was, in certain ways, a return to familiar territory—one that I had covered while at

Washington University. As a second-year law student, under the supervision of Professor Leila Sadat (also a Cleary alumna, I should add), I was a member of the Jessup International Law Moot Court Team. We participated in a worldwide moot court competition, briefing and arguing a case involving a treaty dispute on behalf of a fictitious sovereign government before the International Court of Justice. Our team had success, winning the competition's Hardy C. Dillard Award for the best memorials submitted worldwide. Now, of course, our client was not the fictitious Kingdom of Raglan nor the Republic of Appollonia, but the very real government of Russia.

While the work was fascinating, the cultural adjustment was even more so. I never lost my keys or closed the unsettlingly automatic-locking door to my flat behind me without them, but my utter lack of French language proficiency (I spent a few weeks working with the first-level Rosetta Stone program before heading over) left me in a few precarious situations. Surrounded by French speakers at all times, I learned just enough to be a danger to myself—I could pronounce words with a passable accent, but did not have much of an idea what they meant. I could order a steak, but looked dumbfounded when asked what I presume was whether it should be medium-rare or medium. Dry-cleaning was also impossible to figure out, so I wore wrinkled shirts for three months.

Language barriers aside, there were other interesting contrasts in office conventions. At the office, it was not unusual for lunches to include wine—and extend for several hours—a change from the 15 minutes or fewer devoted to the exercise in Manhattan. French lawyers dress better, usually in well-tailored suits (but



without ties)—a rejection of the business casual attire that predominates here. Espresso is available at all times, but the copying service (a 24-hour staple at firms in New York) closes at 5 p.m.

As events unfolded, it was also a remarkable time to observe America from abroad. Lehman Brothers filed for bankruptcy the morning I flew to Paris, setting off the well-known chain of events leading to the global financial crisis of that fall. And French media followed the American presidential campaign with possibly more fervor than it did their own. When Barack Obama was elected president, I watched the campaign coverage from midnight to six in the morning, first at a party hosted by an American expatriate group (an event also covered heavily by French television), and then, eventually, fighting sleep on the couch in my friend's 18th century Latin Quarter flat, as Obama

gave his now-famous victory address before a quarter-of-a-million people in Grant Park in Chicago.

Shortly after the election, it was time for the hearing, which was to be held at the Peace Palace in The Hague, the Netherlands, a city devoted nearly entirely to international diplomacy and law. With the majestic, tapestried Japanese Room as the setting, the cross-examinations we had prepared for our portion of the hearing unfolded dramatically and as we had hoped. With my assignment complete and the hearing over, I returned to New York, grateful to have broadened my horizons and grateful, also, to be home. A year later, the tribunal sided with the claimants, deciding that it had jurisdiction to hear the merits of the claims, but at that point I was thankfully back to the intricacies of securities litigation. ■■■

Dispatches from Afghanistan

By Marguerite Roy, JD '07



Gardez City where the regional office is based. Interesting, as well as sobering, to note is that I was on my way back from a meeting with the provincial police commander and another station commander when a suicide attacker detonated literally minutes from where our meeting had taken place. These same commanders were the target of a complex attack just last month in Gardez City, again within close range of our regional compound. For the past few weeks we have been on lockdown or White City as we call it—unable to leave our heavily fortified compound—due to suicide attack threats in the city. Indeed, today as I write this I am confined to my compound where I live and work with my other U.N. colleagues. Thus, when asked about my typical day you can now understand that for me and my staff it does not exist.

MANY PEOPLE ASK me to describe a typical day in Afghanistan. My response? There are no typical days, especially in the Southeast Region where there is an active insurgency. I am the Head of Office for the United Nations Assistance Mission in Afghanistan and the Area Security Coordinator for all U.N. Agencies working in the region.

As an example of unpredictability, I was in Khost Province last week and my return to the region was delayed by one day due to weather conditions. In this area we can travel to very few places by vehicle due to explosive devices on the main routes so we are dependent on helicopters. Then the day I managed to leave was the day a suicide bomber penetrated a military base in Khost killing seven CIA personnel and a Jordanian—the same base that I have been to visit military colleagues working in development and reconstruction in the province, as well as those fighting the insurgency.

For three days in a row there have been serious attacks in the center of town both in Khost province where I oversee a provincial office and just yesterday in

Planning Programs and Strategies

LAST MONTH, I gathered together the senior program staff, both national as well as international—for a strategy session to plan our 2010 program activities. In the post-election environment and the military surge, it is unclear what we will be able to do in terms of programs. So we set out to come up with a plan, first identifying our strengths as an organization, done via a SWOT Analysis (Strengths, Weaknesses, Opportunities, and Threats). As our mandate is largely one of coordination, all units participated—Political, Governance, Human Rights, Development and Humanitarian Affairs, and Rule of Law. We gathered the first day to work out the main issues of the SWOT Analysis, determining that we offer a primary means of communication between the population and the government, as well as between the population and the military. We determined that the second day would be spent coming



Marguerite Roy, JD '07, has been serving as the Head of Office for the United Nations Assistance Mission in Afghanistan and the Area Security Coordinator for all U.N. Agencies working in the region since 2007.



up with a plan to coordinate our activities between the various units mentioned above within our own office.

However, not having any typical days in the Southeast Region, an explosion in a neighboring compound disrupted any plans we had for the remainder of the day. We all felt the vibration of the blast due to its proximity to our compound and spent the rest of the morning on the phone to check on our colleagues. Although nothing appeared on the news, five security personnel were killed on the compound, including a Gurkha Guard. Our international colleagues working for the organization were evacuated to the nearest military base and have since gone either to the capital or home on an extended leave. When we reconvened in the afternoon, the meeting did not last more than an hour as concentration was at an all-time low. Individual units were tasked to complete their strategies, and coordination between them was to take place at a later time, after the holidays.

Preparing for a War Zone

FOR ME, graduation from Washington University was in May 2007, and I was sworn into the Missouri Bar in September 2007 before leaving for Afghanistan in October. One might ask why become a lawyer only to head off to a war zone? That is precisely why I became a lawyer, because it offers the flexibility to follow any number of career paths with the skills one can only acquire with a law degree, especially one from a top 20 school that offers the range of courses found at Washington University.

As I oversee five different sectors, including political, human rights, rule of law, governance, and development and humanitarian affairs, the in-depth understanding I acquired in law school of the



Scenes from Marguerite Roy's ongoing work in Afghanistan, including with a delegation of U.N. and other international organization representatives, a group of community organizers, and officers of the International Security Assistance Force



legal system and how it functions allows me to better understand and guide my staff. The courses offered by specialists in their field—international law, international human rights law, international criminal law, and immigration law—enabled me to develop an approach to my work that I would not otherwise have had. I also took advantage of the summer program offered jointly by Washington University and Case Western at Utrecht University where I took fascinating courses such as *Religion & Terrorism*, *International Constitutional Law*, and *International Courts & Tribunals*. Looking at all sides of an issue is a skill best acquired through a legal education.

The human rights unit I now oversee focuses on civilian casualties, illegal detentions, and violence against women. The governance unit aims to increase

the capacity of the local government, while the political unit concentrates on religious and tribal dynamics having an impact on the population and the security situation. The rule of law unit specializes in the formal and informal justice sector. Finally, the development and humanitarian affairs unit coordinates development activities within the region and distributes humanitarian assistance to those in need, including refugees fleeing the conflict in Pakistan.

I firmly believe the knowledge acquired through the variety of courses and my experiences both at Washington University and Utrecht University have enabled me to approach my work with an effectiveness that otherwise I would not have had. Despite the daily challenges, I feel armed with the confidence and legal tools that I need to persist. IIII

Harris Institute Speakers and Events 2008–10



(left) Catherine Amirfar, Debevoise & Plimpton LLP



(left) Betty Oyella Bigombe, Woodrow Wilson International Center



(above) Panel from the International Humanitarian Law Dialogs in Chautauqua



(right) Ambassador Feisal al-Istrabadi of Iraq and Leila Nadya Sadat



(left) Robert Peroni, University of Texas



(right) Lucy Reed, Freshfields Bruckhaus Deringer LLP



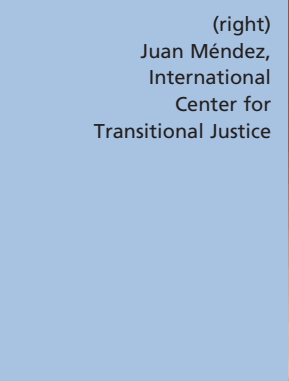
(above) Ambassador Charles Stith, African Presidential Archives and Research Center



(left) Charles Freeman,
Center for Strategic and
International Studies



(right)
Jonathan Hafetz,
ACLU National
Security Project



(right)
Juan Méndez,
International
Center for
Transitional Justice



(right) Joyce E. Penner,
University of Michigan



(left)
Philippe Sands,
University College
London



(left) Guénaél Mettraux,
International Criminal
Tribunal for the
Former Yugoslavia



(right)
H.E. Thomas
Buergenthal,
International
Court of Justice



Ambassadors Program Offers Global, Real-World Perspectives

SOMETIMES THE BEST IDEAS take time to germinate and blossom into full form. Leila Nadya Sadat had just arrived at the law school in 1993 when, as faculty adviser to the international moot court competition, she recruited as a judge for the final round Ralph Earle II, who was

chief U.S. negotiator in the SALT II talks with the Soviets.

Sadat, now the Henry H. Oberschelp Professor of Law and director of the Whitney R. Harris World Law Institute, recalls that Earle's account of how an arms control treaty is negotiated was captivating to students.

"We can tell them in law school, here are the provisions of the treaty, here's what it says, here's how you acquire it. But to get somebody to come in and actually say, 'Well, you know, I sat down with the Russians, and here's what we talked about. This is how we did it,'—that just brings a whole other dimension and learning process for the students," she explains.

That has become a dimension regularly offered since Sadat, as the new director of the Harris Institute, created the Ambassadors Program in 2007 to bring active or retired diplomats to the law school to provide real-life lessons in international law and policy.

So far five ambassadors have participated, four Americans and an Iraqi. The lectures and, in the case of Ambassador-in-Residence Thomas A. Schweich, the courses have covered topics from trade and the United Nations to war crimes and international drug trafficking. The diplomats have shared their firsthand experiences with Afghanistan and other global hotspots in Africa and the Middle East.

"What we're really trying to do is bring some of that foreign policy expertise to students at our law school. We have a strong international law program, and it is important that it not just be international law, but international law and policy," Sadat says.

As she explains, "The law will tell you the drugs are illegal, but it won't tell you how to get rid of them. The law can tell you that human trafficking is a crime, but it can't tell you how to eliminate or really attack the problem. The legal expertise is a very strong tool that we give our students, but understanding how you take the legal expertise and actually achieve solving the problem, that's an extra value added."



Ambassador Thomas Schweich with student research assistants



Ambassador Carla A. Hills

Carla A. Hills, the U.S. Trade Representative under the first President Bush, inaugurated the Ambassadors Program. She delivered the Tyrrell Williams Lecture on “Trade and the 2008 Elections,” expounding on a perennial political issue in this era of globalization. Ambassador Hills is chair and chief executive officer of Hills & Company, an international consultancy on trade and investment issues.

Schweich arrived in the summer of 2008 for a two-year stay as the first Ambassador-in-Residence. Before the latest change of administrations in Washington, D.C., he held dual roles as the State Department’s coordinator for counter-narcotics and justice reform in Afghanistan, and principal deputy assistant secretary for the Bureau of International Narcotics and Law Enforcement Affairs. During his first year at the law school, he served as Special Representative of the Director-General of the U.N. Office on Drugs and Crime.

“Ambassador Schweich has had a tremendous impact on our students, both in and out of the classroom. He is an inspiring and informative instructor, and his courses on Afghan history and on the inner workings of the United Nations are among our most popular,” says Michael Peil, associate dean for international programs and executive director of the Transnational Law Program. “The students who had the opportunity to assist Ambassador Schweich during his time with the U.N. Office on Drugs & Crime considered it the highlight of their time in law school.”

Genevra Alberti, a third-year student who took his U.N. course, says Schweich

led students through detailed comparisons of initial and final drafts of U.N. documents, and engaged them in role-playing as representatives of different countries.

“You understand how the real world functions,” says Alberti. “He helped us understand why the politics that existed were in place.”

Iraqi Ambassador Feisal al-Istrabadi was his country’s deputy permanent representative to the U.N. in early 2009 when he lectured about transitional justice in the prosecutions of Iraq’s former leaders.



Ambassador Feisal al-Istrabadi



Ambassador Charles Stith

In 2009–2010, two Americans gave lectures based on their diplomatic experiences. Stephen J. Rapp, Ambassador-at-Large for War Crimes Issues, lectured about the ability of international justice to bring war crimes violators to account. He had led the prosecution of Charles Taylor, the former president of Liberia, for such violations.

Charles Stith, Ambassador to Tanzania in the Clinton administration, lectured on U.S.–Africa relations in the Obama era. He currently directs the African Presidential Archives and Research Center at Boston University.

Asked how participants in the Ambassadors Program are selected, Sadat notes the speaker’s scholarship as it relates to law school projects and the Harris Institute’s interest in international criminal justice.

“We try to pick people who have some connection to programs that we are already doing,” she says, “to reinforce the intellectual content and give students some idea of what they might do with their law degree and how they might go out and achieve their dreams.” ■■■



Stephen Rapp, Ambassador-at-Large for War Crimes Issues

Four Faculty Members Awarded Fulbrights

AS THE FIRST Washington University faculty member to receive the Fulbright-Tocqueville Distinguished Chair, Leila Nadya Sadat will help expand the University's and law school's worldwide partnerships.

Sadat, the Henry H. Oberschelp Professor of Law and director of the Whitney R. Harris World Law Institute, is one of four law faculty members to receive Fulbright awards in 2009 and 2010. The others are Dorsey D. Ellis, Jr., dean emeritus and the William R. Orthwein Distinguished Professor of Law Emeritus; David Law, professor of law and of political science in Arts & Sciences; and Jo Ellen Lewis, professor of practice and director of the Legal Practice Program.

During spring 2011, Sadat will teach one course in French and another in English to international graduate students at the University of Cergy-Pontoise in France. In related speaking engagements, including a lecture at the Conseil d'Etat, one of France's two supreme courts, she will focus on her celebrated work regarding the International Criminal Court (ICC).

In numerous publications, Sadat has examined international law issues across a broad spectrum. These include the ICC, amnesties for international crimes, and the legal framework applicable to the U.S. "war on terror," particularly in regard to the treatment of detainees.

"The Tocqueville Chair lectures to a distinguished audience at several points during his or her term, and a research colloquium is organized around the interests of the Tocqueville Chair by the host university," Sadat says. "In my case, the colloquium undoubtedly will be on comparative U.S. and European perspectives and outlooks on the ICC and public international law more generally, although the precise topic remains to be decided."



Leila Nadya Sadat

Dorsey D. Ellis, Jr.

Sadat, who earned law degrees from Tulane University, Columbia University, and the University of Paris-Sorbonne, hopes her Fulbright experience will foster relationships among Washington University and institutions of higher education in France.

"The law school has no Francophone partners at this point in time, making this collaboration particularly important given the strong interest amongst our students in studying in French and in France," Sadat says.

The Fulbright program awards its distinguished chairs to renowned scholars set apart by significant experience and extensive publications in their fields. The Tocqueville Chair was established in 2005, marking the bicentennial of the birth of Alexis de Tocqueville, the famous French historian, politician, and author of *Democracy in America*. Sadat is the first woman named to this chair, which is awarded by the Franco-American Commission.

Further cementing the law school's ties with Catholic University of Portugal will be a lasting impact of Ellis's Fulbright grant. During spring 2011, Ellis will teach two graduate classes, *Antitrust Law* and *International & Comparative Competition Law* at the university in Lisbon.

"This should improve our ability to partner with Lisbon's law school as part of the Transnational Law Program," says Ellis, who serves as the program's academic director. "I may also be successful in recruiting more of their students to the program."

By Nancy Fowler Larson



In the past, Ellis has taught in Belgium, Japan, the Netherlands, New Zealand, Taiwan, and the United Kingdom. Working with law students from a broader range of European nations, as well as other countries, also will add to Ellis's expertise when he returns to teach his antitrust comparative law course at Washington University.

"I expect to increase my understanding of competition law as it is enforced in other parts of the world, especially in Europe," Ellis says. "That should enhance my ability to teach competition law systems outside the United States, which is becoming increasingly important for American lawyers to understand."

This fall, Law will become the first Washington University faculty member to visit National Taiwan University's College of Law in Taipei. He will conduct research on the globalization of constitutional law and the inner workings of Taiwan's Constitutional Court.

He notes that the questions he will explore include: To what extent does constitutional law in Taiwan double as a form of national security policy? Would the process of democratization drive judges in previously authoritarian regimes to borrow constitutionally from more democratic countries? Does global competition for investment or human capital give states an economic consensus to respect certain constitutional rights?

"Taiwan will increasingly struggle to retain capital and talent in the face of competition

with China," Law says. "One competitive advantage Taiwan might have is its respect for basic rights or, at least, its ability to lead people to believe it respects basic rights."

Law's research in Taiwan will form part of a book on the globalization of constitutional law that builds upon his previous research in this area, including his 2008 article "Globalization and the Future of Constitutional Rights." He also will work directly with Professor Wen-Chen Chang, a leading Taiwanese public law scholar whose transnational and interdisciplinary work complements Law's own scholarship in comparative public law, judicial politics, constitutional politics, and constitutional theory.

Last May, Lewis returned to the law school with a broader understanding of international law students and legal education in China. A Fulbright Senior Specialist Grant took her to Shanghai's Fudan University, with which Washington University has a strong relationship. At Fudan's School of Law, Lewis taught two courses, *Legal English* to graduate law students and *Introduction to Torts* to undergraduate law students.

"China is a civil law country; we are a common law country," Lewis says. "The law is very different there, but our concerns and our interests are similar in areas like legal issues, legal education, and representation of clients."

This and previous trips to Japan and South Korea have left Lewis with a wider perspective to share with international law students and those who are interested in international legal and educational issues. "It's one thing to read about a culture, it's another to live in it," Lewis says.

Previously, Washington University law faculty members and administrators have been awarded Fulbright grants for a variety of placements, including Austria, France, Germany, Israel, Italy, Korea, Nepal, Portugal, South Africa, Spain, and Suriname. ■■■

Leading Scholars Converge to Discuss Cutting-Edge Issues in International Law

“Although it is possible to formulate functional arguments for restricting opt-out rights under CIL [Customary International Law], it is difficult to conclude from these arguments that such restrictions should apply across the board to all of CIL, especially in light of the inefficiencies that such a mandatory regime is likely to generate.”

Curtis Bradley and **Mitu Gulati**
Duke University

“The risk is that the underlying digital network itself could make political networks vulnerable, a veritable black book of names and addresses for the secret police to round up. In the optimistic scenario, the Internet might help topple dictators; in the pessimistic scenario, the Internet might cement their control. ... It seems incumbent upon us to demand the inculcation of a professional ethic among new media companies to protect the freedom-enhancing aspects of cyberspace.”

Anupam Chander
University of California, Davis

RENOWNED SCHOLARS in international law and foreign relations law recently gathered to present their works-in-progress at the *Public International Law and Theory* workshop, hosted by the law school’s Whitney R. Harris World Law Institute. Attendees came from across the country, as well as from Leiden University and Utrecht University, both in the Netherlands.

Leila Nadya Sadat, the Henry H. Oberschelp Professor of Law and Harris Institute director, and **Melissa Waters**, professor of law, chaired the conference. Sadat also served as the discussant for Duke University professor **Laurence**

Helfer’s paper, “Opting Out: Derogations from Human Rights Treaties in National Emergencies.” Additionally, Waters presented her forthcoming book chapter, “International Law as an Interpretive Tool, 1945–2000.”

“The symposium provided a wonderful opportunity for this distinguished group of scholars to present their work on topics as diverse as the Obama administration’s climate change policies; the responsibilities of Google, Facebook, and other technologies under repressive governments; and the theory of *jus post bellum*,” Sadat says. “In addition to presenting cutting-edge programs and lectures, one of the missions of the Harris Institute is to support and



Professor Leila Nadya Sadat, standing, center, addresses international scholars gathered at the *Public International Law and Theory* workshop.

encourage scholarship at the forefront of international and humanitarian law.”

In addition to Helfer and Waters, other presenters were:

- **Curtis Bradley** and **Mitu Gulati**, Duke University, “Withdrawing from International Custom”;
- **Anupam Chander**, University of California, Davis, “Googling Freedom”;
- **Gregory Fox**, Wayne State University, “Exit from Belligerent Occupation”;

(below) Curtis Bradley and Mitu Gulati, right, both Duke University



(above) Melissa Waters, Washington University

“The evident lesson of these case studies is that occupation is a singularly unhelpful precedent for planning exits from nation-building missions. The fundamental strategy of those missions is to build liberal democratic structures in the hope they foster reconciliation and coexistence. But only four of the 20 occupiers examined sought to build liberal democracies in the territories they controlled.”

Gregory Fox
Wayne State University

“A state’s decision to derogate from a human rights treaty during a domestic crisis can be explained by the fact that the derogation conveys information about the state’s future conduct. ... Stable democracies are more likely to derogate from human rights treaties than autocracies or democratizing states.”

Laurence Helfer
Duke University

“Some of the current (mis)perceptions of the role of moral parameters in the theorization of jus post bellum might be adjusted if just war theorists paid greater attention to the impact of legal rules and principles. Conversely, the legal discipline may draw valuable insights from the content of the classical jus post bellum under just war doctrine and historical sources when defining the contours of jus post bellum in modern international law.”

Carsten Stahn
Leiden University–Den Haag

“When a court invokes non-self-execution doctrine as a rationale for refusing to decide whether threatened criminal sanctions are illegal, the court potentially allows the government to violate the law in the very process of imposing criminal punishment. As Chief Justice Marshall observed ... ‘the United States has been emphatically termed a government of laws, and not of men.’ It will certainly cease to deserve this high appellation, if the courts allow government officials to impose criminal sanctions in violation of established legal rules.”

David Sloss
Santa Clara University

“The tendency by criminal lawyers to see international human rights law as part of the problem—because of the way in which the human rights movement has of late been associated with pressure for relatively more repressive constructions of offences—has blinded them to what they know full well domestically, namely that human rights are potentially their best ally in pushing back repressive excess.”

Frédéric Mégret
McGill University

“Specifically, the Obama administration should explore opportunities for (1) greater, smaller-scale governmental involvement in technology-oriented financial incentives programs; (2) federal-level, top-down, vertical initiatives connecting federal approaches to highways, railroads, and gas prices with smaller scale efforts to have people drive less in their communities; and (3) litigation, which often has a rescaling effect, by interested individuals, nongovernmental organizations, corporations, and government.”

Hari Osofsky
Washington & Lee University

- **Frédéric Mégret**, McGill University, “Prospects for ‘Constitutional’ Human Rights Scrutiny of Substantive International Criminal Law by the ICC, with Special Emphasis on the General Part”;
- **Hari Osofsky**, Washington & Lee University (now University of Minnesota), “Diagonal Federalism & Climate Change: Implications for the Obama Administration”;
- **David Sloss**, Santa Clara University, “Executing *Foster v. Neilson*”;
- **Carsten Stahn**, Leiden University—Den Haag, “*Jus Post Bellum*: Mapping the Discipline(s)”; and
- **Larissa van den Herik**, Leiden University, “The Security Council,

Targeted Sanctions & the Ombuds-Person: Revisiting the Need for Review in Light of the Individualization of Security Council Resolutions.”

In addition to Sadat, other discussants included: **Adeno Addis**, Tulane University; **Robert Ahdieh**, Emory University; **Laura Dickinson**, Arizona State University; **David Luban**, Georgetown University; **Luz Nagle**, Stetson University; **Héctor Olásolo**, Utrecht University; **B. Don Taylor III**, Washington University; **Stephen Thaman**, Saint Louis University; and **Beth Van Schaack**, Santa Clara University. IIII

(below) Laura Dickinson, Arizona State University



(above) Héctor Olásolo, University of Utrecht, left, and Adeno Addis, Tulane University



(above) Luz Nagle, Stetson University

International Opportunities Abound for Students



Dagen-Legomsky Fellow Margaret Wichmann in Thailand

Each year, Washington University law students travel around the world enhancing their studies through specialized programs and projects abroad. Through internships and fellowships, these student-lawyers gain invaluable firsthand experience while working for positive change throughout the developed and developing world. Additionally, through competitions and international academic programs, students receive training and education in international law and human rights law—all designed to prepare them for a changing and increasingly international legal market.

Dagen-Legomsky Fellowship Program

THE WHITNEY R. HARRIS World Law Institute's Dagen-Legomsky Fellowship Program enables students to study and work abroad, particularly in areas of international law and human rights law. Endowed by a gift from Margaret Dagen and named in honor of the Whitney R. Harris World Law Institute's founding director, Stephen H. Legomsky, now the John S. Lehmann University Professor, the program has supported students working and studying abroad for the past 10 years. In summer 2009, for example, McCall Carter, JD '10, and Margaret Wichmann, JD '10, received the Dagen-Legomsky International Public Interest Fellowship to support volunteer work on immigrants and refugee rights with the Church of Northern India and the Mekong Region Law Center in Bangkok, Thailand, respectively. The Church of Northern India, based in Nagpur, is dedicated to the prevention and punishment of human trafficking. McCall led a delegation of three other students in work there. In summer 2010, Oyinlola Oguntebi provided assistance to defense counsel in trials before the

Margaret Dagen, center, with the first Dagen-Legomsky Fellows





Summer Institute for Global Justice students with Fatou Bensouda, International Criminal Court prosecutor, center



International public interest externs in South Africa at a World Cup soccer game



Summer externs in Kenya

Extraordinary Chambers of the Courts of Cambodia. Also this past summer, Geneva Alberti traveled to Belgium for an externship with the European Council on Refugees and Exiles. Additionally, 2009 Dagen-Legomsky Hague Fellow Shannon Dobson and 2010 Fellow M. Imad Khan attended The Hague Academy for International Law in the Netherlands. This prestigious opportunity is available to very few U.S. law students, and is made possible by a special arrangement between the Harris Institute and The Hague Academy of International Law.

Summer Institute for Global Justice

FOR THE FIFTH consecutive year, Washington University School of Law and Case Western Reserve University School of Law have jointly offered an exciting opportunity for students to study at Utrecht University in the Netherlands. Through the Summer Institute for Global Justice, more than 200 students from the United States and Europe have attended courses taught by prominent experts on a variety of subjects including atrocity law and policy, international criminal law, international human rights, comparative antitrust law, comparative constitutional law, international tax, international institutions, and international intellec-

tual property law. Students travel to The Hague to observe trials at the Yugoslavia Tribunal, the Special Court for Sierra Leone, and the International Criminal Court; visit the International Court of Justice; and travel to Brussels to learn firsthand about European Union law-making and institutions. Distinguished Visiting Lecturers in the program have included Justice Richard Goldstone, Ambassador David Scheffer, and Professor David Crane, and guest speakers have included Judge Philippe Kirsch, former president of the International Criminal Court; Judges Thomas Buergenthal and Sir Christopher Greenwood of the International Court of Justice; and Fatou Bensouda, deputy prosecutor of the International Criminal Court. The institute is directed by Leila Nadya Sadat, the Henry H. Oberschelp Professor of Law and director of the Harris Institute.

International Public Interest Externships and Internships

SINCE 2002, more than 100 Washington University law students have interned and studied in Africa through the Africa Public Interest Law & Conflict Resolution Initiative, a student-faculty collaboration designed to foster study, research, and professional experiences in Africa. In

summer 2010, some 15 Washington University law students interned in Africa for 10 weeks, providing volunteer legal services to low-income individuals in South Africa, Ghana, Kenya, Burkina Faso, and Nigeria with assistance from Karen Tokarz, the Charles Nagel Professor of Public Interest Law & Public Service and director of the Dispute Resolution Program, and from Kim Norwood, professor of law.

Seven of these students worked at the Legal Aid Board and Lawyers for Human Rights in Durban, South Africa, where law students have externed for the past nine years. The Legal Aid Board provides free legal assistance on civil and criminal matters to indigent South Africans, while Lawyers for Human Rights provides free legal services to refugees and immigrants. In these placements, Washington University law students engage in client counseling, prison visits, community education, negotiation and dispute resolution with agencies, legal research and writing, trial preparation, and appellate-brief writing.

Five law students interned in Accra, Ghana, at the Legal Resource Centre and at the Federation of Women Lawyers (FIDA-Ghana). The Legal Resource Centre works with com-



Karen Tokarz, center, with summer externs in South Africa



A summer extern in South Africa with a client from the Democratic Republic of the Congo



(above and left) Students involved in sustainable development projects in Madagascar



munities to ensure human rights, social progress, and economic development, especially in the areas of civil liberties, health, employment, education, and housing. FIDA provides free legal advice and representation in court for indigent women and children, undertakes literacy programs, and advocates for legislative reform. This past summer, the students were involved in client counseling, client advocacy, community education, and dispute resolution.

One student interned in Nairobi, Kenya, for the Federation of Women Lawyers office (FIDA-Kenya), providing assistance to indigent women and children. Another student interned in Ouagadougou, Burkina Faso, with Millennium Challenge, which provides funding for projects aimed to reduce poverty and stimulate economic growth. The student worked primarily with a former Burkinabe judge who is leading the conflict management portion of a major land re-organization project. Another student interned for the Legal Action and Women's Rights Programs of the Social & Economic Rights Action Center, in Lagos, Nigeria, investigating and documenting human rights issues.

Several Washington University students have externed with the Extraordinary Chambers of the Courts of Cambodia (ECCC) in Phnom Penh.

This past summer, one student worked with defense counsel. She was the sixth Washington University law student during the past three years to assist the tribunal with prosecuting crimes committed during the Khmer Rouge era. Students also have interned at the International Criminal Tribunal for Rwanda and at the International Criminal Tribunal for the Former Yugoslavia, with defense counsel, the Office of the Prosecutor, or in the Chambers. In 2010, two students also interned for Samata in India, working on mining and environmental issues and one student interned with Bridges Across Borders in Chiang Mai, Thailand.

Most of the students received primary funding through the law school's Summer Public Interest Stipend Program, and several were also awarded travel stipends from the school's Office of International Programs or had Dagen-Legomsky Fellowships.

Sustainable Development in Madagascar

SINCE 2008, law students have engaged in sustainable, community development projects in Madagascar through the *Madagascar Community Development Initiative* course, which includes a spring break trip to the country. This course, co-taught by David Deal, director of the

Intellectual Property & Nonprofit Organizations Clinic and lecturer in law; Judi McLean-Parks, Olin Business School; and Professor Frank Oros, Sam Fox School of Design & Visual Arts, is offered in conjunction with the Missouri Botanical Garden. In spring 2010, students focused on the introduction of a water purification system, a new strain of rice to improve agriculture, and sustainable housing strategies. By searching through expired U.S. patents, law students are challenged to develop economically feasible solutions to problems with locally available materials.

International Justice & Conflict Resolution Field Placement

LAW STUDENTS may extern abroad for a semester through the school's new International Justice & Conflict Resolution Semester Field Placement. In Spring 2010, Sarah Placzek, JD '10, MSW '10, worked with the Office of the Prosecutor for the United Nations International Criminal Tribunal for Rwanda (ICTR), based in Arusha, Tanzania, under the supervision of Professors Sadat and Tokarz. This fall law students Oyinlola Oguntebi and George Lyle will intern for the ICTR's Judicial Chambers and the Office of the Prosecutor at the International Criminal Tribunal for the Former Yugoslavia, respectively.

Leila Nadya Sadat, center, and B. Don Taylor III, back row, left, with Cash Nickerson Fellows



Dorsey D. Ellis, Jr. with Transnational Law Program students

ICC Legal Tools Project

AN INNOVATIVE agreement with the International Criminal Court (ICC) is presenting law students with the opportunity to put their research skills into practice. Through the work of the Harris Institute, Washington University School of Law was the first school in the United States to become a partner in the ICC's Legal Tools Project. Through the arrangement, law students are assisting the ICC with building the most comprehensive and complete database within the field of international criminal law.

The ICC's Legal Tools Project involves the comprehensive collection of resources relevant to the theory and practice of international criminal law. It also brings modern technologies into the investigation, prosecution, and defense of genocide, crimes against humanity, and war crimes. Under the direction of Professor Sadat; Michael Peil, associate dean for international programs; and Yordanka Nedyalkova, Harris Institute associate director, the students are conducting research on national jurisdictions and national cases. These cases involve core international crimes from a group of African States.

Cash Nickerson Fellows

THANKS TO the generosity of alumnus Steven Cash Nickerson, JD '85, MBA '93, several fellows have had the opportunity to work on the Harris Institute's Crimes Against Humanity Initiative. The nearly three-year project involves studying the international law regarding crimes against humanity and forging the draft of a multilateral treaty condemning and prohibiting such crimes. The Cash Nickerson Fellows have performed valuable research on the commission of atrocities from 1900 to 2009 and have worked on both the proposed convention and a related book during the documentation process. The initial fellows were Stephanie Anne Nickerson, BA '09; Margaret Wichmann, JD '10; Sarah Placzek, JD '10, MSW '10; Erika Detjen, JD '10; Kathryn Minton, JD '10; and McCall Carter, JD '10. In 2010–11, the Cash Nickerson Fellows will be Geneva Alberti, Shannon Dobson, Nida Javid, Margaret LeBlanc, and Jason Meyer.

Transnational Law Program

FOUNDED IN 2008, The Transnational Law Program (TLP) is an international and inter-university effort to cultivate a growing class of lawyers and professionals who are trained to practice across

international borders. The collaborative effort pairs Washington University with four European schools: Utrecht University, the University of Trento in Italy, Catholic University of Portugal, and Queen's University Belfast in Northern Ireland. Students who are accepted into the program have several unique opportunities, including an extended study-abroad experience, a degree from each university attended, foreign language instruction, and the ability to participate in the law school's Summer Institute for Global Justice.

This past fall, Washington University began hosting its first TLP students, Zahra Biniiaz, an Iranian national and a senior at University College Utrecht (UCU), and Anggaris Priatna, an Indonesian national and junior at UCU. After spending a semester as an exchange student, Biniiaz planned to study here for an additional year and pursue an LLM in U.S. Law. During the spring semester, four Washington University law students headed to Europe through the TLP. Having spent their first five semesters in St. Louis, they will attend their final three semesters at Utrecht University Faculty of Law. This coming year, 11 Washington University third-year law students will go to Europe and a similar number



Law students in the International Humanitarian Law Project

of European students from Portugal, the Netherlands, and Italy will study here. The TLP is funded in part by an Atlantis grant from the Fund for the Improvement of Postsecondary Education (FIPSE) through the U.S. Department of Education and the European Commission.

Executive LLM Program

NEW IN SUMMER 2010, the Executive Master of Laws Program (ELLM) is the result of a partnership between Korea University and Washington University. The 12-week program is aimed at international attorneys, judges, and government officials who are interested in increasing their knowledge of U.S. law.

The new degree program is part of the law school's expanded international outreach efforts, which build upon existing relationships, including those through the University's McDonnell International Scholars Academy. The ELLM Program is designed to prepare participants for the global legal and business environment through specialized courses in U.S. corporate and business law. Another attractive aspect is that ELLM graduates who hold a first law degree from their home country will be eligible to apply to sit for the New York bar.

Jessup International Law Moot Court

FOR MORE THAN a decade, Washington University School of Law has held one of the best records in the Philip C. Jessup International Law Moot Court Competition, which is among the oldest and most prestigious international law competitions. Annually attracting more than 500 teams from nearly 100 countries, the competition involves an intricate problem in international law, simulating a case before the International Court of Justice. Washington University's Jessup Team has won in the Super Regionals and advanced to the Internationals multiple times, including in recent years placing as high as third and garnering the Alona M. Evans Memorial Award at the International Rounds.

The team's success is due to the strength of the student competitors and the outstanding coaching and advising from Professor Sadat, who serves as the faculty adviser, and alumnus Gilbert Sison, JD '00, an associate at Rosenblum, Schwartz, Rogers & Glass PC, who serves as head coach. Associate Dean Michael Peil coaches the Niagara Cup International Moot Court Competition Team, which won the World

Championship in 2007. Many Niagara participants have gone on to join the Jessup Team in subsequent years.

International Humanitarian Law Teaching Project

FOUNDED IN 2001, the International Humanitarian Law Teaching Project is a one-of-a-kind cooperative program with the St. Louis Chapter of the American Red Cross. Through the project, Red Cross officials train law students to teach about topics in international humanitarian law to area high school students. After the training session, law students facilitate classroom discussions about topics such as the Geneva Conventions, current conflict zones, the lives of refugees, and the extreme challenges posed by landmines. More than 50 law students participate each year and more than eight local high schools take advantage of the program, which is intended to promote student activism and awareness of these issues. The coordinators for 2010–11 are law students Dong Kuen Lee and Michael Peters. III

American Trust Law in a Chinese Mirror

A **AMERICAN LEGAL MISSIONARIES** have left their mark on post-9/11 Afghanistan and Iraq. Under the banner of democracy and the rule of law, U.S. legal professionals of every stamp have launched an ambitious effort to transform the Afghan and Iraqi legal landscapes. ...

For decades, American legal professionals have exported or, in comparative law parlance, “transplanted” American rules, institutions, procedures, and values to countries from Albania to Zambia. ... The United States is not alone. Throughout history, nearly every nation in the world has participated in “legal transplants.” Indeed, the leading authority on legal transplants, Alan Watson, has concluded that legal transplants from abroad are so common that “[m]ost changes in most systems are the result of borrowing.” ...

Comparative law scholars have produced a vast literature documenting and analyzing legal transplants. They have offered a plethora of theoretical models to identify the basic features of and rationales for legal transplants. These scholars have engaged in often heated debate over what causes such transplants to thrive, perish, or turn “toxic” in foreign soil. Thus far, comparative law scholars have focused principally on legal transplants’ impact on the “recipient” country. In so doing, those scholars have missed an equally important phenomenon—the impact of the process on the “donor” country. This article seeks to fill this gap in the literature. It argues that legal transplants can provide a mirror for donor countries to see flaws in their own systems and new directions for reform.

Part I presents a critical analysis of comparative law scholarship. It demonstrates that scholars have failed to recognize the significance of legal transplants for donor as well as recipient countries. The remainder of the article uses one example—China’s 2001 import of the classic “Anglo-American” concept of trust—to illustrate the advantages of a more balanced study of legal transplants.

Part II describes the research base for this article. It shows that China has produced a voluminous and impressive comparative trust law literature. Comparative law research and analysis have played a prominent role in the design, dissemination, and improvement of China’s first Trust Law. Part II demonstrates that China’s comparative trust law literature is important for understanding the trust law model China transplanted as well as the legislative product of that transplant. Yet, because nearly all texts are available only in Chinese, these publications and the lessons



they provide have been inaccessible to those who could most profit from them—trust law scholars and reformers in the United States.

Part III presents the first study of China’s critique of American trust law. It shows that close analysis of Chinese commentary, legislative history,

and statutory text exposes a systemic flaw that

U.S. scholars and reformers should address: inadequate checks and balances on trustees.

The article concludes that this finding raises serious questions about the current direction of American trust law. Rather than strengthening the traditional legal and moral constraints on trustees, reformers are actually weakening those constraints. Thus, the mirror China provides should inspire reformers to see our trust system as it really is and to abandon their ill-advised reform agenda.

THE CHINESE TRUST LAW literature paints a disturbing picture of an American trust system out of balance. This system favors trustees at the expense of settlors, beneficiaries, and third parties alike. Chinese critics trace this imbalance to three main factors: (1) the “negative attitude toward settlor rights,” (2) insufficient protection of beneficiaries, and (3) secrecy of trusts.

In a Chinese mirror, American settlors are weak and ultimately irrelevant. Once settlors establish trusts, American trust law severs their ties to those trusts. Unless settlors had the foresight to reserve rights in the trust instrument or to name themselves trustees or beneficiaries, they “do not possess any rights whatsoever with respect to the trust property or trustee.” Indeed, this separation of settlor from trust is so complete that American trust law denies settlors even the status of party to their own trusts. Under the American definition of the trust, where once there were three parties to a trust, now only two parties exist—the trustee and the beneficiary. The settlor becomes at best an interested bystander.

For Chinese scholars, the very notion of cutting off settlors from their own trusts is perverse. ... Moreover, the American approach misses another obvious point—the “constructive role” of settlors in enforcing their own trusts. Who better than settlors can determine whether the trust purposes, beneficiary rights, and trustee duties they themselves prescribed are “conscientiously fulfilled?” Yet, rather than promoting this beneficial, even

indispensable, function of settlors, American trust law actually impedes it. ...

China's depiction of American beneficiaries is troubling. The Chinese trust law literature reveals beneficiaries our system has left behind—the young, the sick, the nameless, even the unborn. It shows that in the United States those most vulnerable to trustee abuse and neglect must fend for themselves. According to Chinese scholars, American trust law makes beneficiaries the principal, and often only, check on trustees. This model simply assumes that beneficiaries can defend their own rights and interests. Except in the charitable trust context, it provides no mechanism to protect those who cannot protect themselves. Yet, as Chinese commentators emphasize, these are precisely the beneficiaries for whom many settlors create trusts. ...

Finally, the Chinese trust law literature exposes a third, equally disturbing source of imbalance in American trust law—invisible trusts. It reveals American trusts so secret that their very existence is known only to their settlors and trustees. To make matters worse, because trusts are “continuous in nature,” those trusts may well survive their settlor's death. Thus, if the American settlor takes the secret to the grave, the trustee alone may know that the property she enjoys is not her own.

Chinese scholars point out that even if beneficiaries are aware that such a trust exists, rules that promote secrecy of trusts may make it impossible for beneficiaries to fulfill the role American trust law assigns them as enforcer of trusts. Because no record exists of an invisible trust's purpose, property, parties, or fiduciary rights and duties, beneficiaries lack the information they need to monitor a trustee and hold that trustee accountable for any misconduct. Indeed, secrecy of trusts may effectively deny beneficiaries any claim whatsoever to trust property. ...

The Chinese trust law literature shows that secrecy of trusts poses significant dangers as well for American third parties who have a “legal relationship” with the trustee. When trusts are secret, a third party has no way to “know the truth” about whether the party on the other side of the table is a trustee, the transaction violates the trust purpose, or the property at issue is in fact trust property. Chinese authors argue that the effect is to injure both the individual involved in the transaction with the trustee and the commercial system as a whole. Secrecy of trusts can cause third parties to “sustain unwarranted harm,” and undermines the “security and efficiency” of commercial transactions.

Chinese commentators trace the invisible trust phenomenon to two flaws in American trust law. First, the U.S. system permits oral trusts. ... Second, the U.S. system fail[s] to require registration of trusts except in the charitable trust context. They argue that “public notice of trusts” is essential to ensure that beneficiaries, third parties, and the general public can “easily look up the trust purpose,” property, and parties' rights and duties. ...

In the end, then, the Chinese trust law literature sends an unmistakable message to American and Chinese readers alike. The most effective, fair, and moral trust system is one that recognizes and balances the needs of all parties affected by trusts—settlers, beneficiaries, and third parties as well as trustees.

COMPARATIVE LAW SCHOLARS define their central mission as to “render the foreign familiar.” ... This article has suggested a new mission for the comparative law field—to render the familiar foreign. It has demonstrated that study of a foreign system can provide invaluable perspectives for domestic legal scholars and reformers. Specifically, this article has examined China's recent experience with transplanting the American trust law model. It has shown that the most telling lessons may be found in what China rejected rather than what China adopted. ...

The Chinese trust law literature reveals an American trust system out of balance, a system that favors trustees at the expense of settlors, beneficiaries, and third parties. This literature shows that American trust law cuts settlors off from their own trusts, leaves beneficiaries unprotected from trustee abuse, and denies trust parties and third parties alike knowledge of the terms, administration, and even the very existence of trusts. China's critique exposes the dangers of what both American and Chinese scholars have aptly called a system of “trusting trustees.”

Ironically, the American trusts and estates field is not addressing this imbalance, but instead appears to be heading in precisely the opposite direction. Under the influence of law and economics theory, prominent scholars and reformers are rapidly dismantling the traditional legal and moral constraints on trustees. Trusts are becoming mere “contracts,” and trust law nothing more than “default rules.” “Efficiency” is triumphing over morality. In the law and economics universe of foresighted settlors, loyal trustees, informed beneficiaries, and sophisticated family and commercial creditors, trusting trustees may make sense. In the real world, however, it does not. A trust system that exalts trustee autonomy over accountability can and increasingly does impose significant human costs on all affected by trusts.

China's critique of American trust law challenges U.S. reformers to reconsider their current course. In a Chinese mirror, we can see that trusting trustees is the problem, not the solution. ||||

Excerpted with permission from “American Trust Law in a Chinese Mirror,” 94 *Minnesota Law Review* 602 (2010) www.minnesotalawreview.org/sites/default/files/Foster_MLR.pdf

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The Anatomy of a Conservative Court: Judicial Review in Japan

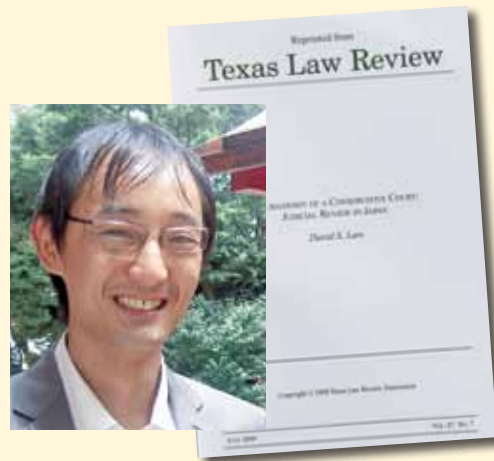
By David S. Law

THE SUPREME COURT OF JAPAN (SCJ) has been described as the most conservative constitutional court in the world, and for good reason. One might characterize it as “conservative” in the sense of being so passive or cautious that it almost never challenges the government. Alternatively, or in addition, one might characterize it as “conservative” in the sense that it happens to share the ideological views and preferences of Japan’s long-ruling conservative party, the Liberal Democratic Party (LDP). What is clear, however, is that the label fits.

Since its creation in 1947, the court, known in Japanese as the Saiko Saibansho, has struck down only eight statutes on constitutional grounds. By way of comparison, Germany’s constitutional court, which was established several years later, has struck down over 600 laws. The majority of the Japanese Supreme Court’s rulings of unconstitutionality have, moreover, been less than momentous. Among the rare and often obscure legislative provisions that the Court has struck down are a law punishing patricide more severely than other forms of homicide, a law restricting the ability of pharmacies to operate within close physical proximity of one another, a rule limiting the liability of the postal service for the loss of registered mail, a law restricting the ability of co-owners of forest land to subdivide their property, and, most recently, a statutory provision that distinguished for purposes of citizenship eligibility between illegitimate children of Japanese fathers who acknowledged paternity prior to birth and those whose fathers acknowledged paternity only subsequent to birth. ...

Why is the SCJ so conservative? Drawing on interviews conducted in Japan with a variety of judges, officials, and scholars—including seven current and former members of the Japanese Supreme Court itself—this article offers an in-depth account of why the Court has failed to take an active role in enforcement of the postwar constitution. It describes the formal and informal institutions and practices that have stacked the deck heavily against liberal constitutional decision-making by the SCJ. These include the education, recruitment, and promotion of Japan’s career judges; the screening and selection of Supreme Court justices; the resource limitations and practical constraints faced by a sitting justice; and the influence of the Chief Justice and select administrators within the judiciary over the behavior of the lower courts and the composition of the SCJ.

What these institutional structures have created, however, is not a judiciary that is necessarily or inherently conservative in ideology or disposition, but rather one that is highly responsive to the sensibilities of its internal leadership and capable of



adapting quickly to a change in said leadership. In practice, the judiciary is run by a cadre of elite senior judges who hold key administrative posts, including that of Chief Justice, and wield an impressive array of powers that enable them to enforce their preferred views throughout the institution and over time. ...

Parts II and III of this article discuss the two basic reasons why the Japanese Supreme Court is so conservative. The first, per Part II, is that it is difficult for someone who is truly liberal to be appointed to the Court. The second, per Part III, is that it is difficult for someone who is already on the Court to behave in a truly liberal way. The reasons for the Court’s conservatism, it will be argued, are both political and institutional in nature.

The Conclusion draws several lessons from the Japanese experience about the relationship between judicial politics and electoral politics, and the mediating role of institutional structure. It is impossible to wholly insulate a court from the influence of its political environment. Institutional design can, however, reconcile the formal requirements of judicial independence with the practical necessity of political responsiveness. In Japan, there exists a sophisticated apparatus for ensuring that the judiciary remains in sync with the wishes of the government. This apparatus is to be found not in the government, however, but within the judiciary itself. The result is a judiciary that combines a high degree of judicial independence, in the form of bureaucratic autonomy, with a high level of sensitivity to the wishes of relevant political actors.

THE CONSERVATISM of the Japanese Supreme Court illustrates two recurring features of judicial politics. The first is that judicial politics and electoral politics cannot be decoupled. There is more than one way in which the Japanese judiciary can be characterized as independent, but whatever judicial independence means, it cannot mean independence over the long term from prevailing

political forces. In the Japanese context, judicial independence has meant that the courts have enjoyed the power to manage their own personnel matters in the first instance while also escaping overt forms of control by other political actors over the manner in which specific cases are decided. What the courts do not possess, however, is the capacity to pursue policies out of sync with those favored by a government that has been in power for decades. The conservatism of Japan's courts is the inevitable result of their long-time and ongoing immersion in a conservative political environment. There is no institutional structure or mechanism capable of thoroughly insulating courts from politics. ...

Political actors can influence a court's behavior directly or indirectly by manipulating the composition of the court, the resources available to members of the court, and the range of strategic options available to the court as an institution. In the case of the SCJ, all of these forms of influence are at work. A gauntlet of screening mechanisms ensures that left-leaning jurists, who are prepared to strike down policies favored by the LDP, are unlikely to reach the Supreme Court, while the few who do reach the Court are hobbled by acute resource constraints that make it difficult for them to steer the law in a new direction.

What is perhaps most interesting about Japan from an institutional perspective is that the LDP has, in effect, delegated much of the task of political control to ideologically reliable agents within the judiciary itself—namely a cadre of senior judges centered upon the Chief Justice and his administrative aides in the General Secretariat. The result of this deft bit of engineering is a judiciary that amply satisfies formal criteria of judicial independence yet remains reliably in tune with the wishes of the government.

The SCJ is further constrained by the practical difficulty of prevailing against the government. Judicial efforts to strike down government policy may fail or even backfire: past experience suggests that the LDP may respond to an irksome constitutional decision by ignoring the decision or seeking a constitutional amendment. From a strategic perspective, it is probably better for the Court to render no decision at all than to render a decision that is disobeyed. Disobedience makes a court look ineffectual and thus begets further disobedience. The perception that a court lacks power is ultimately self-fulfilling. This fact does not appear to be lost on the justices, one of whom likened the power of the SCJ to that of a *denka no*, or “treasured sword” of legendary power that is “passed from generation to generation.” ...

The institutional characteristics of the SCJ also play an important role in shaping its behavior. Although the impact of politics on judicial behavior is inescapable, the timing and extent of that impact can vary greatly. Even a dog on a leash enjoys a degree of slack: it can follow faithfully, or it can drag its heels. Likewise, the political environment defines the outer limits of what a court can hope to accomplish, but within those limits, the court can either facilitate or hinder the government's efforts to make policy. The internal organization, rules, and practices of the Court play a crucial role in determining which course it will take. The SCJ has

proven more help than hindrance to the LDP because the manner in which it is designed provides political actors with the means to reshape its behavior rapidly and dramatically. Its structural sensitivity to political intervention demonstrates a second recurring feature of judicial politics: the institutional characteristics of a court govern its responsiveness to the political environment.

IF MANAGEMENT of the judiciary is left to [a] self-replicating clique of judges—as it has been, for most of the past—the result will be a judiciary that is both formally independent and highly inertial. But the way to change its direction is simple: one need only replace the head of the mechanism, the Chief Justice. Notwithstanding the intensely bureaucratic character of the judiciary, it should be faster and easier for a liberal Prime Minister in Japan to transform the Japanese Supreme Court than for a liberal President in the United States to do the same for our Supreme Court. The most important thing—and perhaps the only thing—that the Prime Minister need do is to defy convention and appoint as Chief Justice someone who is unusually young, highly energetic, very liberal, and, perhaps most importantly, has not been recommended by the existing leadership of the judiciary. ...

The Japanese judiciary may be a bureaucracy, but it is also a highly disciplined one in which power is concentrated to an unusual degree in the hands of one person. It is, as a result, neither resistant nor unresponsive to political influence. By the time Kazuto Ishida retired after serving only four years as Chief Justice, the Supreme Court of Japan was a changed institution. There is no reason to think that history cannot repeat itself. Precisely because the judiciary is institutionally responsive to political influence, however, it is unlikely to change course unless the government does so as well. Because no amount of institutional engineering can sever the connection between electoral politics and judicial politics, any enduring change in the behavior or direction of the Court must either originate or find support at the ballot box. If the Court is conservative, that is ultimately because the government is conservative, and so too are a majority of the nation's voters. It is implausible that any judiciary could defy an ideologically aligned government and electorate for any meaningful period of time. What the institutional structure of the Japanese judiciary ensures is that it will bend sooner rather than later. IIII

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Getting Beyond the Crossfire Phenomenon: A Militant Moderate's Take on the Role of Foreign Authority in Constitutional Interpretation

THE U.S. SUPREME COURT [recently] revisited the issue that, in many respects, kicked off the 21st-century debate over the relationship between international law and the U.S. Constitution. In the aptly named *Kennedy v. Louisiana*, Justice Anthony Kennedy, writing for a five-member majority, held that the use of the death penalty for child rape violated the Eighth Amendment's prohibition on cruel and unusual punishment. For anti-death penalty advocates, *Kennedy* provides important evidence that key victories of the last decade (in *Roper v. Simmons* and *Atkins v. Virginia*) thus far have withstood the recent conservative turn of the Court.

For advocates of the use of foreign and international law in constitutional interpretation, however, the decision offers a very different, and bleaker, picture. For international lawyers, Justice Kennedy's opinion in *Kennedy* is a far cry from his groundbreaking majority opinion in *Roper* just three years earlier. *Kennedy* is striking in the absence from the opinion of any discussion of foreign authority and the role that it should play in constitutional interpretation. Justice Kennedy passed on the opportunity to reiterate—and strengthen—*Roper's* holding that “international opinion” can play a “confirmatory role” in constitutional analysis.

Gone, too, are *Roper's* references to the Convention on the Rights of the Child and other human rights treaties, and its survey of foreign practices on the death penalty. In short, in *Kennedy*, Justice Kennedy's powerful internationalist voice fell strangely silent. The reasons behind Justice Kennedy's apparent (perhaps temporary) loss of enthusiasm for the internationalist enterprise must necessarily be left to speculation. But he may well have been influenced by the increasingly rancorous nature of the public debate over the role of foreign authority in constitutional interpretation.

Since *Roper*, that debate—in the news media, in the blogosphere, and even before Congress—has fallen prey to what I call the “Crossfire phenomenon.” Like the old CNN news commentary program, the Crossfire debate on foreign authority that has developed since *Roper* is great fun to watch, but often completely unedifying from the perspective of learning anything substantive about the complex issues involved. So-called “nationalists” saw in *Roper* an enormous threat to the very foundations of American democracy, and they have been fighting back hard ever since. In the immediate wake of *Roper*, members of both the House and the Senate introduced resolutions declaring that “judicial determinations regarding the meaning of the Constitution of the United States should not be based on ... [foreign precedent] unless such ... [foreign precedent]

inform[s] an understanding of the original meaning of the Constitution.”

At the confirmation hearings of both Chief Justice John Roberts and Justice Samuel Alito, conservative senators expressed the view that a judge's citation of foreign precedent constituted an impeachable offense. One prominent conservative scholar has even called for a constitutional amendment banning the practice. Many internationalists, for their part, simply cannot understand what all of the fuss is about: they remain convinced that citation to foreign authority raises no serious legitimacy concerns whatsoever. Some international lawyers and scholars find themselves, like myself, in the uncomfortable middle of the Crossfire debate. As moderates, or “militant moderates” ... we recognize and take seriously the legitimacy concerns voiced by nationalists. At the same time, we agree with the internationalists that foreign authority, properly considered, can and should play an important role in constitutional interpretation. But with the increasing pressure to “choose up sides” in this increasingly divisive debate, what's a militant moderate to do?

The modest goal of this essay is to sketch out a militant moderate's take on the role of foreign and international law in constitutional interpretation—one that moves the debate beyond the Crossfire phenomenon depicted in the popular press. I begin by framing the question in terms of the broader (but often overlooked) issue that, in my view, is really driving current debate: American judges' growing participation in transnational judicial dialogue of various kinds. I then briefly examine, and critique, key arguments and assumptions of both internationalists and nationalists. Finally, I sketch out a militant moderate take on the appropriate use of foreign authority in constitutional interpretation. Given the brevity of this essay, I of course do not seek to provide a definitive answer to complex questions that have been, and will continue to be, considered elsewhere in much greater depth. Instead, drawing on previous scholarship, I suggest a possible analytical framework to consider some of these questions—one that may help to strike a balance between the legitimate concerns of nationalists and the equally legitimate aspirations of internationalists.

ONE OF THE GOALS of this essay is, in a sense, to re-characterize the question at the heart of the Crossfire debate: Should U.S. courts—following the lead of courts throughout the common law world—participate in the emerging (and increasingly robust) transnational judicial dialogue on constitutional interpretation? For the militant moderate, the answer is, “It depends.” In the



militant moderate's view, the legitimacy of transnational judicial dialogue on constitutional interpretation depends entirely on how domestic courts go about participating in and shaping that dialogue. The militant moderate thus

focuses on *methodology*, believing that the entire enterprise is only as legitimate as the underlying methods used by the courts to build the dialogue. In other words, the key questions that we should be asking are: *How* are courts taking into account foreign and international legal norms in their work? What interpretive techniques are they using? Which of those techniques have proven effective, and which can be considered “legitimate”? And how do we think about issues of methodological “legitimacy” in this context? ...

Current Supreme Court practice with respect to treaties has thus far been limited to the most conservative technique: the use of human rights treaties to gild the domestic lily. In this technique, a court points to international treaty provisions as a kind of value added—that is, as additional support for its interpretation (based on domestic sources of law) of a constitutional provision. The internal logic of the court's opinion is rooted in domestic sources; for that reason, the integrity of the opinion would stand even if the discussion of treaties were excised entirely. Indeed, discussion of international law often seems to be tacked on as a sort of afterthought to a detailed discussion of domestic law.

Justice Kennedy's opinion in *Roper*, at first blush, is a quintessential example of the gilding the lily technique. He first concluded that a domestic consensus existed supporting abolition of the juvenile death penalty. He then cited the ICCPR and the Convention on the Rights of the Child as evidence of an international consensus supporting abolition. He contended that the “opinion of the world community, while not controlling our outcome, does provide respected and significant confirmation for our own conclusions.” Taken at face value, the “confirmatory role” that Justice Kennedy ascribes to international opinion seems to be a fairly innocuous kind of international “window dressing” for an opinion otherwise firmly rooted in domestic law.

Further along the spectrum is a somewhat more aggressive technique for utilizing international treaties in constitutional interpretation: a technique that I call “contextual interpretation.” Rather than simply gilding the lily with international law sources, courts utilizing the contextual approach tightly interweave discussion of international treaties into their analysis of domestic legal sources. The courts do not consider the treaties to be binding; instead, they rely on them for their persuasive value, considering them useful in elucidating the meaning of domestic constitutional provisions. ...

Finally, at the far end of the spectrum is a much more radical technique known as the constitutional *Charming Betsy* canon. In this technique, a domestic constitutional provision is construed in conformity with the country's international human rights law obligations. Advocates of the canon argue that, “[w]here the [c]onstitution is ambiguous, [a] [c]ourt should adopt that meaning which conforms to the principles of universal and fundamental rights rather than an interpretation which would involve a departure from such rights.” In most common law countries, the constitutional *Charming Betsy* canon has not yet made its way into the mainstream of judicial practice, instead remaining the object of human rights amicus briefs and the occasional dissenting opinion. ...

My goal here is not to critically assess these interpretive techniques, nor to express views as to which techniques might be legitimate for use by U.S. courts (both questions which I have taken up at length elsewhere). Instead, I have briefly described a range of available techniques simply to make a straightforward point—but one that is too often overlooked in the current Cross-fire debate. Judicial participation in transnational judicial dialogue on constitutional interpretation is not a straightforward always/never, for/against proposition. Instead, dialogue takes a variety of forms, and courts worldwide have developed a range of techniques—some quite modest, others fairly radical—to participate in that dialogue. Similarly, American judges participating in dialogue can choose among the various techniques—and perhaps develop new approaches that are uniquely appropriate to American legal and democratic traditions.

AUTHOR'S NOTE

This past term, the Supreme Court revisited the role of foreign and international law in constitutional interpretation. In a 6-3 decision in *Graham v. Florida*, the Court held that the Eighth Amendment prohibits the imprisonment of non-homicide juvenile offenders for life without the possibility of parole. Justice Kennedy, writing for the majority, once again cited foreign and international law (including the *Convention on the Rights of the Child*) as evidence that the practice was cruel and unusual, and dissenting Justices once again condemned the practice. Thus *Graham v. Florida* provides striking evidence that Justice Kennedy's “powerful internationalist voice” has reasserted itself, and that debate over the role of foreign and international law in constitutional interpretation is far from over.

Excerpted with permission from 77 *Fordham Law Review* 635 (2008) law2.fordham.edu/publications/articles/500flspub16896.pdf

Melissa A. Waters, professor of law, focuses her teaching and scholarship on foreign relations law, international law, conflict of laws, and human rights law.

On the Shores of Lake Victoria: Africa and the Review Conference for the International Criminal Court

By Leila Nadya Sadat

ON MAY 31, 2010, between 1,500 and 2,000 delegates will gather on the shores of Lake Victoria in Kampala, Uganda, to attend the first Review Conference for the International Criminal Court. Diplomats from presumably all 111 ICC States Parties will be present, along with their counterparts from many ICC non-Party States and representatives of civil society. That the seven-year Review Conference is taking place at all, only 12 years after the Diplomatic Conference establishing the Court was held in the city of Rome, is extraordinary. The conventional wisdom on the ICC's establishment was that it would take decades, not a mere four years, to achieve the necessary 60 ratifications to bring the Statute's entry into force. That this important Diplomatic gathering for the first Review Conference—the only one mandated by the ICC Statute—is taking place in the City of Kampala, is even more extraordinary, and profoundly important.

All five situations currently before the Court involve African nations, subjecting the Court to accusations that it is biased against Africa. At the same time, it is widely, although not universally, acknowledged that victimization in Africa has been widespread, and that these cases represent precisely the kinds of situations the Court was established to address: the “most serious crimes of concern to the international community as a whole.” Bringing the Review Conference to Africa, where African victims and African leaders, as well as the larger international community, can discuss these issues as part of the “stocktaking exercise” planned for the first week of the Review Conference is deeply significant, much more so than if the issues were being discussed in an assembly hall located in New York, Geneva, or The Hague. Just as it seemed both appropriate and fortuitous that the 1998 Diplomatic Conference establishing the ICC was held in Rome, an historic city that had itself suffered centuries of war, there is no doubt that the decision to hold the Review Conference in Kampala—the capital of an ICC situation country—may affect not only the atmospherics of the meeting, but influence its substantive outcome, as well.

Ten years ago, I wrote that the Rome Diplomatic Conference may have effectuated a “constitutional moment” for the international legal order. It was apparent in 1998 that the adoption of the International Criminal Court Statute, after more than 75 years of false starts, posed a challenge to classic understandings of sovereignty and our understanding of the international legal system established by the United Nations Charter. The ICC Statute places State and non-State actors side by side in

the international arena, and there are significant elements of supra nationalism in the Statute, particularly as regards the ability of the Court's Assembly of States Parties to take decisions by majority vote. The adoption of the ICC Statute, by vote rather than consensus, over the objections of the United States and China, also challenged the hegemony of the great powers, and particularly the five Permanent Members of the Security Council. This carried over into article 16 of the ICC Statute, which permits the Security Council to stop an ICC investigation for 12 months, but only if the Council can muster the votes to do so, effectively denying the P-5 the veto they wanted over proceedings before the Court.

Kampala presents an extraordinary opportunity to build upon the successes of Rome and reflect more deeply upon the implications of what was wrought there, particularly with respect to the early operations of the Court and the relationship between the ICC and situation countries. Yet, Kampala may also become the epicenter of a struggle to tame the Court and make it more amenable to the wishes of the great powers, particularly the P-5 (three of which have remained outside the Rome regime and all of which are skeptical, to varying degrees, about including the crime of aggression in the Statute) and, at the same time, make it more responsive to States Parties which are directly experiencing the operations of the Court on their territories and in their region.

To the extent that Rome, with its challenge to the Westphalian system, represented an “uneasy revolution,” the revolution is far from complete. In spite of the larger number of ratifications the ICC Statute has attracted, resistance to the Rome Paradigm remains, and has even increased over the past 12 years in some quarters. Certainly, the U.S. position on the International Criminal Court only hardened with the election of a new U.S. President determined to reassert what he saw as America's preeminence and prerogatives. The U.S. attack on the Court probably had an important effect on its early development. (Whether the net effect of that attack strengthened or weakened the Court, however, remains to be seen.) Both China and the United States seem recently to have softened their



opposition to the ICC, and there is no doubt that the presence of a U.S. (Non-State Party) delegation—for the first time in nine years—at the Eighth Session of the Assembly of States Parties, was a harbinger of a possible rapprochement between this new international institution and its greatest foe. At the same time, on many issues, there is still more divergence than convergence between the U.S. government and the ICC, particularly as regards the crime of aggression, which will be negotiated, and possibly inserted into the Statute, at Kampala.

The ICC's job has also been made more difficult in some ways because it has focused all its early investigations in Africa. Africa's struggle against colonialism and the ensuing attachment of Africans to sovereignty and "strong" understandings of the meaning of self-determination have made the ICC's interventions particularly controversial, especially following the issuance of the arrest warrant against Sudanese President Omar al Bashir, and the decision by the Prosecutor to apply to the Court to open up an investigation into the Post-Election violence in Kenya, a decision narrowly approved by the Court in a recent 2-1 decision of Pre-Trial Chamber II. Given that the Office of the Prosecutor has received communications from 8,461 individuals since July 2002 alleging that crimes had been committed, mostly from individuals located in France, Germany, Russia, the United Kingdom, and the United States, many—and not just Africans—have wondered aloud at the Court's apparent focus upon Africa, and have argued that the ICC should have taken up investigations in countries such as Colombia and Afghanistan, into the activities of British nationals during the invasion of Iraq in 2003 (because the Court had no jurisdiction over Americans), and even in Palestine. Is the Court's focus on Africa a question of bias? Holding the Review Conference in Kampala places this issue front and center.

A second controversy that has plagued the ICC regarding its initial arrest warrants is whether the issuance of those warrants in the Uganda and Sudan situations interfered with an ongoing peace process and jeopardized civilians suffering from violent assaults on their lives, their way of life, and their possessions. Indeed, one of the four items to be taken up during the first week on "stocktaking" is the issue of "peace and justice," and the outcome of those discussions will be very important to shaping the Court's future. This short article leaves that question open, but at the same time suggests that there is very little empirical evidence that the ICC's arrest warrants have destroyed prospects for peace in any situation country currently before the Court.

So Kampala promises to be a test of States' commitments to the principles they embraced at Rome, and a very significant test of political support for the Court. For African nations, upset at being the target of the ICC's investigations, it will take a great deal to overcome their perceptions that African States are being unfairly singled out, and focus upon the good that

the Court can do in the world, and on their continent. On the question of aggression, if discussions progress in a manner not acceptable to the United States and the other Permanent Members of the Security Council, those States may find themselves opposing the Court as well (and African States may feel that their refusal to accept the crime of aggression is simply more evidence of the double standards that now imperil the Court's legitimacy). It will take skillful leadership and cool heads to navigate these twin threats to the Court, and like Odysseus's decision to choose Scylla over Charybdis in navigating difficult straits, some difficult political compromises may be necessary to avoid the entire Kampala conference collapsing. The hope, of course, is that the States Parties to the International Criminal Court will leave Kampala willing to recommit themselves to the ICC and the principles it stands for—no impunity for the commission of atrocity crimes and a commitment to justice as well as peace. If that happens, Kampala will proudly stand, as Rome did in 1998, as the center of the "civilized world"—the place to which those who suffer from the commission of atrocities that shock the conscience of humankind came to lift their voices and press their cause so that "their" Court could successfully carry out the work it was established to do.

Epilogue

THE KAMPALA CONFERENCE was ultimately successful in its stocktaking efforts and in adopting a definition of aggression for the International Criminal Court, but the definition will be inoperative for many years to come, and at a minimum, until 2017. One key concession that was made, in addition to the delayed entry into force, was that the definition and the Court's jurisdiction over the crime will not apply to ICC non-Party States (like the United States). Thus, Kampala achieved an important symbolic victory, but, as this author predicted, like the terrible choice of Odysseus in the Straits of Messina, difficult compromises had to be made to save the overall effort, some of which may negatively impact the Court considerably in the future. ■■■

Excerpted with permission from *AFLA Quarterly* 10 (2010)

Leila Nadya Sadat, the Henry H. Oerschelp Professor of Law and director of the Whitney R. Harris World Law Institute, is an internationally recognized authority on international criminal law and human rights. She represented Timor-Leste during the Eighth Meeting of the ICC Assembly of States Parties and served as an NGO delegate to the ICC Review Conference in Kampala, Uganda.

Selected International and Comparative Law Scholarship

THE FOLLOWING IS A SAMPLING OF WASHINGTON UNIVERSITY SCHOOL OF LAW'S INTERNATIONAL AND COMPARATIVE LAW SCHOLARSHIP, including pieces from faculty whose primary areas of focus are in different areas of the law. These entries highlight recent work, rather than listing all international scholarship and activities. Faculty members who have conducted international work, but who have not necessarily published on international topics, are not included.

SCOTT A. BAKER

Professor of Law and Professor of Economics

Selected Recent Scholarship

- Intellectual Property Disclosure as 'Threat'" (with P. Lee and C. Mezzetti), *International Journal of Economic Theory* (forthcoming)
- "'Make or Buy' and International Law" (with M. Gulati), 165 *Journal of Institutional and Theoretical Economics* 134 (2009)

Professor Baker's primary area of focus is in the intersection of law, economics, and game theory.

GERRIT DE GEEST

Professor of Law and Director, Center on Law, Innovation & Economic Growth

Selected Recent Scholarship

- Multiple chapters, *Economic Analysis of the DCFR: The Work of the Economic Impact Group within the CoPECL Network of Excellence* (eds. Chirico and Larouche), European Law Publishers (2010)
- "The Formation of Contracts in the Draft Common Frame of Reference Consumer Acquis" (with M. Kovac), 17 *European Review of Private Law* 113 (2010)
- "Annullable Bonuses and Penalties" (with G.D. Mattiacci and J. Siegers),

29 *International Review of Law and Economics* 349 (2009)

- *The Economics of Comparative Law* (ed. G. De Geest), Edward Elgar (2009)

Selected Recent Activities

- Consulting Board, European Review of Contract Law
- Past president, European Association of Law & Economics
- Delivered recent presentations at Utrecht School of Economics and University of Amsterdam
- Member, Harris Institute Faculty Advisory Board

Professor De Geest's primary areas of focus are comparative law and law and economics.

JOHN N. DROBAK

George Alexander Madill Professor of Real Property & Equity Jurisprudence, Professor of Economics, and Professor of Political Economy

Selected Recent Scholarship

- "Introduction to Law and the New Institutional Economics," 26 *Washington University Journal of Law & Policy* 1 (2008)
- "Understanding Judicial Decision-Making: The Importance of Constraints on Non-Rational Deliberations" (with D. North), 26 *Washington University Journal of Law & Policy* 131 (2008)

Selected Recent Activities

- Delivered series of lectures to begin new PhD program in law and economics, Goethe University in Frankfurt
- Taught *U.S. Antitrust Law from a Global Perspective*, Catholic University of Portugal
- Lectured on limits of rational choice and economic theory, European School for New Institutional Economics, Cargese, Corsica, France
- Chaired panel on "Law and Legal Systems," 14th *Annual Conference for New Institutional Economics*, Stirling, Scotland
- Member, Harris Institute Faculty Advisory Board

Professor Drobak's primary areas of focus are law and economics, civil procedure, federal jurisdiction, and theory of property rights.

FRANCES H. FOSTER

Edward T. Foote II Professor of Law

Selected Recent Scholarship

- "American Trust Law in a Chinese Mirror," 94 *Minnesota Law Review* 602 (2010)

Selected Recent Activities

- Member, Board of Directors, American Society of Comparative Law
- Associate Member, International Academy of Comparative Law
- Member, American Association for the Advancement of Slavic Studies
- Member, Association for Asian Studies
- Member, Association for the Study of the Cuban Economy
- Member, Harris Institute Faculty Advisory Board

Professor Foster's primary areas of focus are trusts and estates, and the legal systems of socialist and former socialist countries.

JOHN OWEN HALEY

William R. Orthwein Distinguished Professor of Law Emeritus

Selected Recent Scholarship

- *Comparative Law: Historical Development of the Civil Law Tradition in Europe, Latin America, and East Asia* (2nd ed.) (with J.H. Merryman and D.S. Clark), LexisNexis (forthcoming)
- *Rivers, Revenue, Rice: Law's Political Evolutions* (forthcoming)
- "Why Study Japanese Law?" 58 *American Journal of Comparative Law* (forthcoming)
- "Foundations of Governance and Law: An Essay on Law's Evolution in Colonial Spanish America," *Dikaion* (forthcoming)
- "Rivers and Rice: What Lawyers and Legal Historians Should Know about Medieval Japan," *Journal of Japanese Studies* (forthcoming)
- "Law's Evolution: The Political Foundations of Private Law in Medieval Europe and Japan" (eds. D. Ma. and J.L. Van Zanden), *Law and Long-Term Economic Change: An Eurasian Perspective*, Stanford University Press (forthcoming)

- "The Criminal Law of Japan" (eds. K. Heller and M.D. Dubber), *The Handbook of Criminal Law*, Stanford University Press (forthcoming)
- "Japan: A Society of Rights?" (ed. D. Linnan), *Legitimacy, Legal Development and Change: Law & Modernization Reconsidered*, Ashgate Publishing (forthcoming)
- "Recurring Encounters: Personal Perspectives on Thomas L. Blakemore's Career Contributions to Japanese Law," *29 International House of Japan Bulletin* 2 (2009)
- "Comment on *Using Criminal Punishment to Serve Both Victim and Social Needs*," *72 Law and Contemporary Problems* 219 (2009)

Selected Recent Activities

- Delivered numerous presentations at international and Japanese law conferences
- Member, Board of Trustees and Editorial Committee, Society for Japanese Studies
- Member, Executive Committee, American Society of Comparative Law
- Former director, Harris Institute

Professor Haley's primary areas of focus are Japanese law and comparative law.

PETER A. JOY

Vice Dean; Professor of Law; and Co-Director, Criminal Justice Clinic

Selected Recent Scholarship

- "Japan's New Clinical Programs: A Study in Light and Shadow," *The Global Clinical Movement: Educating Lawyers for Social Justice* (ed. F. Bloch), Oxford University Press (forthcoming)
- "Commemoration of the Founding of the Japan Clinical Legal Education Association (JCLEA): Opportunities for Collaboration," *1 Lawyers and Clinical Legal Education* 21 (2009)
- "The Role Played by the National Network of Clinical Faculty: The Experience in the



United States and Issues Facing Japan," *1 Lawyers and Clinical Education* 71 (2009)

Selected Recent Activities

- Delivered lecture at Northumbria University, United Kingdom
- Has lectured, taught, and/or conducted research in Australia, Canada, Indonesia, Japan, South Africa, and the United Kingdom

Professor Joy's primary areas of focus are legal ethics, clinical legal education, and trial practice.

TOVE KLOVNING

Foreign/Comparative/International Law Librarian and Lecturer in Law

Selected Library Research Guides

- "Research Survival Skills in an American Law Library for Visiting Scholars" and "Comparative Constitutional Law—A Legal Research Guide for the Novice and Experienced Legal Researcher," *FCIL* online (2010)
- "Researching International Legal Issues," "International Legal Process: War Crimes Tribunals," and "Researching the Law of a Foreign Country," *FCIL* online (2009)

Selected Recent Activities

- Moderator, Global Legal Skills Conference III, Monterrey, Mexico
- Attended, 28th Annual Course on International Law Librarianship in Istanbul, Turkey
- Taught legal research seminar, Catholic University of Portugal

Professor Klovning's primary area of focus is foreign, comparative, and international law as it applies to legal research.

DAVID S. LAW

Professor of Law and Professor of Political Science

Selected Recent Scholarship

- Foreword: *The Supreme Court and Benign Elite Democracy in Japan* (H. Itoh), Palgrave MacMillan (2010)
- "Judicial Independence," *The International Encyclopedia of Political Science* (eds. B. Badie et al.) (forthcoming)
- "Review of David B. Goldman, *Globalisation and the Western Legal Tradition: Recurring Patterns of Law and Authority*," *52 American Journal of Legal History* (forthcoming)

- "The Japanese Constitution: The Appearance and Reality of Constitutional Transplantation," *The Social and Political Foundations of Constitutions* (eds. D. Galligan and M. Versteeg) (forthcoming)
- "The Anatomy of a Conservative Court: Judicial Review in Japan," *87 Texas Law Review* 1545 (2009)
- "Globalisation and the Future of Constitutional Rights," *102 Northwestern University Law Review* 1277 (2008)

Selected Recent Activities

- Received Fulbright Grant, National Taiwan University's College of Law
- Awarded International Affairs Fellowship in Japan (Hitachi Fellowship), Council on Foreign Relations
- Presented "The Evolution and Ideology of Global Constitutionalism" (with M. Versteeg), Law and Society Association annual meeting in Chicago and American Political Science Association annual meeting in Washington, D.C.
- Presented paper on imposed constitutionalism in Japan at Foundation for Law, Justice, and Society, Oxford University, among other scholarly presentations

Professor Law's primary areas of focus are law and political science, comparative public law, judicial politics, constitutional politics, and constitutional theory.

STEPHEN H. LEGOMSKY

John S. Lehmann University Professor

Selected Recent Scholarship

- "Citizens' Rights and Human Rights," *43 Israel Law Review* (forthcoming)
- "Undocumented Students, College Education, and Life Beyond," *Children Without a State* (ed. J. Bhabha), MIT Press (forthcoming)
- "Restructuring Immigrant Adjudication," *59 Duke Law Journal* 1635 (2010)
- *Immigration and Refugee Law and Policy* (with C. Rodriguez, beginning with 5th ed.), Foundation Press (5th ed., 2009)
- "Portraits of the Undocumented Immigrant: A Dialogue," *44 Georgia Law Review* 65 (2009)
- "The Last Bastions of State Sovereignty: Immigration and Nationality Go Global," *Challenges of Globalization* (ed. A.C. Sobel), Routledge Press (2009)

- "Refugees, Asylum, and the Rule of Law in the USA," *Refugees, Asylum Seekers and the Rule of Law: Comparative Perspectives* (ed. S. Kneebone), Cambridge University Press (2009)
- "Learning to Live with Unequal Justice: Asylum and the Limits to Consistency," *Refugee Roulette* (eds. J. Ramji-Nogales et al.), NYU Press (2009)

Selected Recent Activities

- Serving as Global School of Law Visiting Professor, Catholic University of Portugal
- Drafted proposed bill for revamping U.S. immigration adjudication system, at request of U.S. House Immigration Subcommittee
- Delivered numerous scholarly presentations on immigration, refugees, and citizenship, including those in Potsdam, Hong Kong, Lisbon, London, Brussels, Berlin, Chicago, Duke University, Pennsylvania State University, Catholic University of D.C., Hebrew University of Jerusalem, the University of New Mexico, and the ABA annual Administrative Law conference in Washington; upcoming talks include those in Nijmegen, Tel Aviv, Stockholm, Lund, Hong Kong, Braga, and Miami
- Member, Harris Institute Faculty Advisory Board, and former director, Harris Institute

Professor Legomsky's primary areas of focus are U.S., comparative, and international immigration and refugee law and policy.

JO ELLEN D. LEWIS

Professor of Practice and Director, Legal Practice Program

Selected Recent Scholarship

- "Legal Writing Programs in Korean Law Schools: Possible Structures and Resources," *9 Journal of Korean Law* 381 (2010)
- "Developing and Implementing Effective Legal Writing Programs in Korean Law Schools," *9 Journal of Korean Law* 125 (2009)

Selected Recent Activities

- Received Fulbright Senior Specialist grant to teach at Fudan University School of Law; taught courses in *Legal English* and *Torts* to PhD, LLM, and undergraduate students
- Presented program on "Teaching Legal Skills to International Faculty and Students" at *Global Legal Skills Conference V*,

hosted by Facultad Libre de Derecho de Monterrey, Mexico

- Conducted workshop for legal writing professors in South Korea, hosted by Seoul National University School of Law and the Korean Association of Law Schools, in 2009 and 2010
- Lectured at Korea University on clinical legal education
- Served as visiting lecturer at Aoyama Gakuin University, Tokyo
- Served as visiting professor at Universidade Catolica Portuguesa's School of Law in Lisbon, teaching *English Legal Writing and Legal Research—U.S. Law* to LLM students

Professor Lewis's primary area of focus is legal practice, including legal research, analysis, and writing. She also specializes in real estate law.

WEI LUO

Lecturer in Law and Director of Technical Services, Law Library

Selected Recent Scholarship

- *Export Control and WMD Nonproliferation Law: A Legal Research Guide*, William S. Hein & Co. (2009)
- *Legal Research: A Textbook (Falü Wenxian Jiansuo Jiaocheng)* (with Liying Yu), Tsinghua University Press (2008)

Selected Recent Activities

- Past chair, American Association of Law Libraries' Asian Law Working Group
- Past president, Asian American Law Library Caucus
- Working with the Legislative Affairs Office of the People's Republic of China's State Council on the creation of a codification system for the PRC's laws and regulations
- Hosted a symposium on freedom of government information in Beijing with Philip Berwick, associate dean for information resources and lecturer in law, and the Law Society of China

Professor Luo's primary areas of focus are Chinese law and legal research, in addition to his work in the law library.

CHARLES R. McMANIS

Thomas & Karole Green Professor of Law

Selected Recent Scholarship

- "Introduction: Open Source and Proprietary Models of Innovation: Beyond

Ideology" and "The Interface of Open Source and Proprietary Agricultural Innovation: Facilitated Access and Benefit-Sharing Under the New FAO Treaty," *40 Washington University Journal of Law & Policy* 405 (2009)

- "The Proposed Anti-Counterfeiting Trade Agreement (ACTA): Two Tales of a Treaty," *46 Houston Law Review* 1235 (2009)
- *Licensing Intellectual Property in the Information Age* (with K. Port, J. Dratler, F. Hammersley, T. McElwee, and B. Wrigley), Carolina Academic Press (2nd ed., 2005, teacher's manual, 2008)

Selected Recent Activities

- Former consultant, World Intellectual Property Organization
- University Ambassador to Korea University through Washington University's McDonnell International Scholars Academy
- Member, Harris Institute Faculty Advisory Board
- Has taught, lectured, and/or researched in Argentina, Brazil, China, England, Germany, India, Japan, Korea, Malaysia, Taiwan, Singapore, and Switzerland

Professor McManis's primary area of focus is intellectual property law.

CARL MINZNER

Associate Professor of Law

Selected Recent Scholarship

- "Review of *The China Legal Development Yearbook, Volumes 1 and 2*," *China Review International*, Brill and China Academy of Social Sciences Press (forthcoming)
- "Judicial Disciplinary Systems for Incorrectly Decided Cases," *39 New Mexico Law Review* (2009); also to appear as chapter in *Chinese Justice: Civil Dispute Resolution in Contemporary China* (eds. M. Woo, M. Gallagher, and M. Goldman), Cambridge University Press (forthcoming)
- "Riots and Coverups: Counterproductive Control of Local Agents in China," *31 University of Pennsylvania Journal of International Law* 53 (2009)

Selected Recent Activities

- Organized conference, *Legal Reform in China*
- Testified before Congress regarding Chinese government petitioning institutions

- Keynote speaker, Houston World Affairs Council event on modern China
- Published op-eds on Chinese domestic politics in the *New York Times* and *Los Angeles Times*
- Taught class on American property law, P.R.C. State Intellectual Property Office

Professor Minzner's primary area of focus is Chinese law and politics.

STANLEY L. PAULSON

William Gardiner Hammond Professor of Law and Professor of Philosophy

Selected Recent Scholarship

- "A Strong Normativity Thesis in Hans Kelsen's Legal Philosophy?" *Institutional Reason*, (ed. M. Klatt), Oxford University Press (forthcoming)
- "The Very Idea of Positivism," *The Legacy of John Austin* (ed. M. Freeman), Oxford University Press (forthcoming)

Selected Recent Activities

- Conference at University of Leicester devoted to Paulson's work, with commentators from the United Kingdom and European continent
- Delivered plenary address at conference on Kelsen's work, Buenos Aires
- Served as John Fleming Visiting Fellow in the Faculty of Law, Australian National University, Canberra (summer 2010)

Professor Paulson's primary area of focus is European legal philosophy and legal theory, and he is an authority on the work of Hans Kelsen.

ADAM H. ROSENZWEIG

Associate Professor of Law

Selected Recent Scholarship

- "Taxing Offshore Investment Funds" (forthcoming)
- "Thinking Outside the (Tax) Treaty" (forthcoming)
- "Not All Carried Interests Are Created Equal," *29 Northwestern Journal of International Law & Business* 213 (2009)

Selected Recent Activities

- Presented papers on international tax and international relations at the International Law Weekend and Law & Society Annual Meeting

- Member, Harris Institute Faculty Advisory Board

Professor Rosenzweig's primary area of focus is tax law and policy.

LEILA NADYA SADAT

Henry H. Oberschelp Professor of Law and Director, Whitney R. Harris World Law Institute

Selected Recent Scholarship

- "A Rawlsian Approach to International Criminal Justice and the International Criminal Court," *Tulane Journal of International & Comparative Law* (forthcoming)
- *Crimes Against Humanity: The Need for a Specialized Convention*, Cambridge University Press (forthcoming)
- "Understanding the Complexities of International Criminal Tribunal Jurisdiction," *Routledge Handbook of International Criminal Law* (forthcoming)
- "The Nuremberg Paradox," 58 *American Journal of Comparative Law* 151 (2010)
- "On the Shores of Lake Victoria: Africa and the Review Conference for the International Criminal Court," *AFLA Quarterly* 10 (2010)
- "Transnational Judicial Dialogue and the Rwandan Genocide: Aspects of Antagonism and Complementarity," 22 *Leiden Journal of International Law* 543 (2009); Grotius Centre Lecture at The Hague
- "A Presumption of Guilt: The Unlawful Enemy Combatant and the U.S. War on Terror," 37 *Denver Journal of International Law* 539 (2009)

Selected Recent Activities

- Named Distinguished Fulbright Alexis de Tocqueville Chair at the University of Cergy-Pontoise in Paris, France (spring 2010)
- Chair, Steering Committee, Crimes Against Humanity Initiative, Washington University School of Law
- Represented Timor-Leste during Eighth Meeting of ICC Assembly of States Parties
- Served as NGO delegate to ICC Review Conference in Kampala, Uganda
- Chair, International Law Students Association
- Director, Summer Institute for Global Justice, and adviser, Philip C. Jessup International Law Moot Court Team
- Delivered speech on prosecuting Crimes Against Humanity to audience of nearly

5,000 at Chautauqua Institution, among numerous presentations

- Has taught, lectured, worked, and/or conducted research in Belgium, France, Germany, Greece, Ireland, Italy, the Netherlands, and the United Arab Emirates

Professor Sadat's primary areas of focus are public international law, international criminal law, and human rights law.

BRIAN TAMANAHA

Professor of Law

Selected Recent Scholarship

- *Beyond the Formalist–Realist Divide: The Role of Politics in Judging*, Princeton University Press (2010)
- "Understanding Legal Pluralism: Past to Present, Local to Global," 2007 Julius Stone Address, 30 *Sydney Law Review* 375 (2008)

Selected Recent Activities

- Delivered featured lectures at universities in Jakarta, Nagoya, Sao Paulo, and Toronto
- Presented on legal pluralism at forum sponsored by the United States Institute for Peace
- Has taught, lectured, worked, and/or conducted research in Australia, Brazil, Canada, Japan, and the United Kingdom; has published many articles in a variety of leading journals, and has had various publications translated into Chinese, Japanese, Spanish, French, and Ukrainian

Professor Tamanaha's primary areas of focus are comparative law and jurisprudence.

KAREN L. TOKARZ

Charles Nagel Professor of Public Interest Law & Public Service; and Director, Dispute Resolution Program

Selected Recent Scholarship

- "Advancing Social Justice Through ADR and Clinical Legal Education in India, South Africa, and the U.S.," *The Global Clinical Movement: Educating Lawyers for Social Justice* (ed. F. Block), Oxford University Press (forthcoming)

Selected Recent Activities

- Presented "International Clinical Externships," *Externships 5* conference and Miami, Florida, and "Universal Clinical Legal Education," Association of American Law Schools Conference on Clinical Legal Education

- Since 2002, has directed externship placements for law students with Legal Aid Board and Lawyers for Human Rights in South Africa; also assists with field placements for students in Rwanda, Burkina Faso, Cambodia, Thailand, and India
- Served as Fulbright Senior Specialist, University of KwaZulu-Natal in Durban, South Africa

Professor Tokarz's primary areas of focus are dispute resolution, clinical legal education, human trafficking, and international clinical legal education and dispute resolution.

MELISSA A. WATERS

Professor of Law

Selected Recent Scholarship

- "Judicial Dialogue in Roper: Signaling the Court's Emergence as a Transnational Legal Actor?," *The U.S. Supreme Court and International Law: Continuity or Change?* (eds. Sloss et al.), Cambridge Press (forthcoming)
- "International Law as an Interpretive Tool, 1945–2000," *The U.S. Supreme Court and International Law: Continuity or Change?* (eds. Sloss et al.), Cambridge Press (forthcoming)
- "The Attitudes of U.S. Courts Towards International Courts and Tribunals: Is Sanchez-Llamas a Model for Transnational Dialogue?," *The United States and International Courts and Tribunals*, (ed. Romano), Cambridge Press (forthcoming)

Selected Recent Activities

- Served as visiting scholar at the Brookings Institution, researching book examining political, economic, and legal forces involved in evolution of the death penalty under international law
- Taught short course on death penalty, Utrecht University
- Served as principal co-author of Supreme Court amicus brief in *Kiyemba v. Obama*, addressing ramifications under international law of U.S. government's indefinite detention of non-combatant Chinese Uighurs
- Presented scholarship at annual conference of the American Society of International Law, among other presentations
- Member, Harris Institute Faculty Advisory Board

Professor Waters' primary areas of focus are foreign relations law, international law, conflict of laws, and human rights law.



“... the struggle for peace, law,
and justice in the world is eternal.”

—Whitney R. Harris
February 8, 2001



