FOREWORD

This volume, *Origins*, is the first of three in a collection of original essays, each of which makes an important contribution to our understanding of humanitarian law. Together the three books—"Origins," "Challenges," and "Prospects"—comprise a publications event of the first magnitude. It is a great honor for me to have been invited by co-editors John Carey, John Pritchard, and William Dunlap to write a foreword for each book.

Criminal excesses in warfare have been with us since Biblical times, as one of the essayists in this book reminds us. But today for the first time in human history, people of all nations are vocally demanding that war criminals be brought to justice. Their governmental leaders, with some reluctance, are beginning to respond to this demand. The recent Pinochet episode began with most of the world's governments opposed to Spain's attempt to extradite former Chilean President Augusto Pinochet from Great Britain to be prosecuted in Spain for crimes against humanity. But the popular reaction was so great that political leaders one by one began to express support for the idea of accountability for Pinochet. (His medical unfitness for trial eventually defeated the extradition attempt. But the important lesson for future heads of state who might preside over grave violations of humanitarian law—fear of travel abroad—is a significant additional deterrent resulting from the Pinochet case.)

Additionally, although governmental leaders were at first reluctant to support the International Criminal Tribunals for the Former Yugoslavia and Rwanda, they are now acknowledging the success of these tribunals and the huge popular support they have elicited. The new International Criminal Court has come into being. But it is actively opposed by the United States, whose civilian leaders are personally worried about the Pinochet precedent.

The American civilian leaders may be bucking the dynamics of history. The world public wants accountability after centuries of exploitation by their own self-interested leaders. Perhaps even more important is the other side of the coin of war-crimes prosecutions: that it is the most tangible present manifestation of increasing concern for human rights. Ordinary, innocent civilians are the primary victims of war crimes and crimes against humanity. Even though history has numerous examples of state abuse of their criminal apparatus to prosecute dissidents and persecute political opponents, that image is slowly being replaced by

a more benign one: the use of international tribunals to deter acts of violence against civilians and allow breathing room to civilians whose only "crime" is not to participate in, or to dissent from, the ruling elite's ideological program.

International humanitarian law itself wasn't always viewed benignly. Essayists in this book find origins of humanitarian law in military discipline and military codes of conduct. Even the watershed trials of the major Axis war criminals at Nuremberg and Tokyo were widely perceived in their day as punishment for completed crimes that were committed during the Second World War. But students today see a different aspect of those trials: the deterrence aspect. By punishing the violation of the human rights of noncombatants during the Second World War, the Nuremberg and Far Eastern tribunals contributed mightily to the development of victims' rights. Similarly, the trial and conviction of Adolf Eichmann in 1961 for genocide—by a state that did not even exist at the time of Eichmann's crimes—has come to be viewed not as an aberrant form of retroactive jurisdiction, but rather as an affirmation of the basic human right not to be injured or killed by a state for reasons of the victim's nationality, ethnicity, race, or religion.

One might ask, however, if international humanitarian law is currently in the take-off stage, why do we want to pause and look back at its origins? Why, for example, do we find case studies in the present volume of the war crimes tribunals on the island of Crete in 1898 and of the long history of the development of limits on land warfare? First, a pragmatic historian might say that the important question is: what mistakes were made? If we can learn about them, then we are less likely to repeat them. Second, a political scientist might instead focus upon the successes of the past rather than the mistakes. She might say that postwar assessments and accountability for militarily unjustifiable excesses of war, if repeated over a number of wars, demonstrate that war has a logic of efficiency embedded within it: The idea is not to win a war at all costs, but to win it with a minimum amount of collateral damage. As political scientist Quincy Wright used to teach, there are two goals in every war: to win the war and to win the subsequent peace.

A third answer might be offered by a student of international law: that in a world divided into relatively autonomous states, certain rules of interstate cooperation rapidly emerge that serve the collective interests quite well. These rules, which we call international law, are basically the same today as they were thousands of years ago. Each application of the rule to a specific controversy helps to illuminate and clarify the meaning of the rule itself. Thus, in the area of international humanitarian law, we may look to some of the earliest manifestations—such as the case study of the war crimes tribunals in Crete in 1898—less as a precedent than as an application. Crete is more akin to a scientific experiment in war-crimes accountability than to a historical happenstance. In brief, the experience in Crete is relevant today precisely because it is an instantiation of interna-

tional law. Admittedly this viewpoint may appear to have metaphysical overtones, yet I don't know how else to describe it. I am sure that students of law who are familiar with the historical development of common law will appreciate its similarity to the development of international customary law. Each judge in a common-law case believes, whether metaphysically or not, that the decision reached is in substantial accordance with pre-existing law even if outside commentators might with some reason call some of those decisions cases of first impression.

I will be saying a little more about these matters in prefaces to the two other volumes in this collection, with references to the essays contained therein. For now (as they say) I turn the meeting over to John Carey, who will introduce the specific essays in this volume and tell us about the criteria for their selection.

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