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## Foreword

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## FOREWORD

*Claudio Grossman\**

International criminal law attempts to sanction crimes that have a global nature and impact. After World War II, the international community came together to begin addressing important international issues, including preventing future war and non-war related atrocities and crimes. From the International Military Tribunals established in the wake of World War II to the world's first permanent International Criminal Court (ICC), a number of international bodies, treaties, and statutes have been formed in an effort to effectively administer criminal justice on an international level. Yet the administration and application of international criminal justice has faced significant hurdles and there are numerous opinions on the proper application, scope, and import of international criminal law.

This important issue of the [\*Penn State Journal of Law & International Affairs \(JLIA\)\*](#) examines the evolution and future of the role of international criminal justice in international relations, as well as the structural challenges facing the ICC and other global

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\* [Claudio Grossman](#), Dean, Professor of Law, and Raymond Geraldson Scholar for International and Humanitarian Law, Washington College of Law, American University. Dean Grossman is currently the Chair of the United Nations Committee against Torture. The views expressed herein are those of Dean Grossman and not necessarily those of the Committee against Torture. Dean Grossman is also President of the Inter-American Institute of Human Rights and member of the International Objectives Committee of the Association of American Law Schools. He was a member of the Inter-American Commission on Human Rights from 1993-2001, where he served in numerous capacities including President (1996-97; 2001), the Special Rapporteur on the Rights of Women (1996-2000), and the Special Rapporteur on the Rights of Indigenous Populations (2000-2001).

institutions in the coming decades. Contributors to this edition include academics and practitioners intimately involved in the field of international criminal justice.

In the first article, entitled [\*No Witness, No Case: An Assessment of the Conduct and Quality of ICC Investigations\*](#), Dermot Groome, Senior Trial Attorney in the Office of the Prosecutor of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the Distinguished Fellow of International Criminal Law at the Dickinson School of Law, Pennsylvania State University, reviews the performance of ICC prosecutors. Mr. Groome discusses five problem areas that have been identified with respect to investigations conducted by ICC prosecutors. These issues include (1) the failure of prosecutors to fully discharge their obligation to conduct investigations fairly under Article 54 of the Rome Statute establishing the ICC, (2) the brevity of investigations, (3) the poor quality of evidence presented in court, (4) the improper delegation of investigative functions to intermediaries, and (5) the failure to fully analyze and disclose exculpatory material. The article details these problems and the impact that they have had on numerous investigations and on the ICC's reputation as a whole.

In the next article, [\*The Limits of Judicial Idealism: Should the International Criminal Court Engage with Consequentialist Aspirations?\*](#), Shahram Dana, former Associate Legal Officer also in the Office of the Prosecutor at the ICTY and currently a professor of law at The John Marshall Law School, argues that in an effort to achieve an “awesome array of goals” – including, *inter alia*, retribution, deterrence, punishment, rehabilitation, reconciliation, incapacitation, and restoration – international criminal law has overreached and contributed to the politicization of the international judicial process. After examining in particular the application of reconciliation and deterrence in international sentencing proceedings, Professor Dana concludes that the attempt to implement these goals has actually perverted international criminal sentencing outcomes such that they do not reflect the culpability of the individual. In light of this, Professor Dana concludes that international prosecutors and judges should focus on more modest goals in order to preserve the ICC's core responsibility of punishing those responsible for international atrocities.

In the third article, Yaël Ronen, the Senior Lecturer at Sha'arei Mishpat College, Hod Hasharon, Israel, addresses the impact that the ICTY has had on domestic courts in Bosnia and Herzegovina. Professor Ronen's article, [\*The Impact of the ICTY on Atrocity-Related Prosecutions in the Courts of Bosnia and Herzegovina\*](#), identifies and explains the impact that the ICTY has had on rates of prosecution, trends in sentencing, and the adoption and application of criminal law norms.

In the fourth article, [\*The Arab Spring's Four Seasons: International Protections and the Sovereignty Problem\*](#), authors Jillian Blake and Aqsa Mahmoud identify the various international legal protections used during the revolutions in Tunisia, Bahrain, Egypt, Syria, and Libya after the Arab Spring in 2010. The authors argue that international law did not provide a uniform degree of protection to civilians and combatants in each case. Some post-Arab Spring states are relatively peaceful and have had more international assistance, while others, most pointedly Syria, are still facing internal conflicts. The authors argue for a uniform standard of protections for all populations affected by armed conflict, war crimes, or crimes against humanity. In particular, the authors provide recommendations for limiting what they argue are outdated sovereignty norms and eliminating unjustified subjective distinctions in the international legal system, using lessons from the Arab Spring.

The final article, by Patrick Keenan, Professor of Law at the University of Illinois College of Law, entitled [\*International Institutions and the Resource Curse\*](#), moves beyond international criminal law and addresses the role of international institutions more generally by examining how international institutions could mitigate the "resource curse." Academics have almost always identified reforming domestic institutions as the only way for developing states to overcome the corruption, inequality, and lack of development that often accompanies the discovery of rich natural resources. Professor Keenan advocates for the intervention of international institutions when domestic institutions have failed or when reform is unlikely. International institutions can play an important role in providing information as well as preventing access to international markets as an incentive to force public officials to work for the domestic good. In this way, the international community can have a direct impact on

developing states that could otherwise potentially succumb to the “resource curse,” and thus also prevent widespread corruption and human rights violations.

Through the numerous articles submitted by leading experts in the field of international criminal law, this volume addresses the real and substantial challenges facing the international community as it moves forward to effectively administer international criminal justice. Despite the numerous challenges facing the international community, the importance of preventing international atrocities and crimes cannot be overstated, and the voices and opinions of all the stakeholders must continue to be considered.