

CHARLES HOMER HASKINS  
PRIZE LECTURE FOR 2008

*A Life of Learning*  
**Theodor Meron**

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## ON CHARLES HOMER HASKINS

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Charles Homer Haskins (1870–1937), for whom the ACLS lecture series is named, was the first chairman of the American Council of Learned Societies, from 1920 to 1926. He began his teaching career at the Johns Hopkins University, where he received the B.A. degree in 1887, and the Ph.D. in 1890. He later taught at the University of Wisconsin and at Harvard, where he was Henry Charles Lea Professor of Medieval History at the time of his retirement in 1931, and dean of the Graduate School of Arts and Sciences from 1908 to 1924. He served as president of the American Historical Association in 1922, and was a founder and the second president of the Medieval Academy of America (1926).

A great American teacher, Charles Homer Haskins also did much to establish the reputation of American scholarship abroad. His distinction was recognized in honorary degrees from Strasbourg, Padua, Manchester, Paris, Louvain, Caen, Harvard, Wisconsin, and Allegheny College, where in 1883 he had begun his higher education at the age of 13.

## HASKINS PRIZE LECTURERS

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2008	Theodor Meron
2007	Linda Nochlin
2006	Martin E. Marty
2005	Gerda Lerner
2004	Peter Gay
2003	Peter Brown
2002	Henry A. Millon
2001	Helen Vendler
2000	Geoffrey Hartman
1999	Clifford Geertz
1998	Yi-Fu Tuan
1997	Natalie Zemon Davis
1996	Robert William Fogel
1995	Phyllis Pray Bober
1994	Robert K. Merton
1993	Annemarie Schimmel
1992	Donald W. Meinig
1991	Milton Babbitt
1990	Paul Oskar Kristeller
1989	Judith N. Shklar
1988	John Hope Franklin
1987	Carl E. Schorske
1986	Milton V. Anastos
1985	Lawrence Stone
1984	Mary Rosamond Haas
1983	Maynard Mack

## BRIEF BIOGRAPHY OF THEODOR MERON

Since his election to the Tribunal by the U.N. General Assembly in March 2001, Judge Meron, a citizen of the United States, has served on the Appeals Chamber, which hears appeals from both the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR). Between March 2003 and November 2005 he served as president of the Tribunal. A leading scholar of international humanitarian law, human rights, and international criminal law, Judge Meron wrote some of the books and articles that helped build the legal foundations for international criminal tribunals. A Shakespeare enthusiast, he has also written articles and books on the laws of war and chivalry in Shakespeare's historical plays.

Judge Meron immigrated to the United States in 1977. Prior to that he served in the Israeli Foreign Service where his duties included that of Legal Adviser and the Ambassador to Canada and to the United Nations in Geneva.

Since 1977, Judge Meron has been a professor of international law and, since 1994, the holder of the Charles L. Denison Chair at New York University School of Law. In 2000-2001, he served as Counselor on International Law in the U.S. Department of State. Between 1991 and 1995 he was also Professor of International Law at the Graduate Institute of International Studies in Geneva, and he has been a Visiting Professor of Law at Harvard and at the University of California (Berkeley). He received his legal education at the universities of Jerusalem, Harvard (where he received his doctorate), and Cambridge. In 2006, he was named Charles L. Denison Professor Emeritus and Judicial Fellow at the New York University Law School.

He was co-editor-in-chief of the *American Journal of International Law* (1993-98) and is now an honorary editor. He

is a member of the Board of Editors of the *Yearbook of International Humanitarian Law*, a member of the Council on Foreign Relations, the American Society of International Law, the French Society of International Law, the American Branch of the International Law Association, the Bar of the State of New York, and of the Shakespeare Institute. He has served on the advisory committees or boards of several human rights organizations, including Americas Watch and the International League for Human Rights. In 1990, he served as a public member of the United States Delegation to the CSCE Conference on Human Dimensions in Copenhagen. In 1998, he served as a member of the United States Delegation to the Rome Conference on the Establishment of an International Criminal Court (ICC) and was involved in the drafting of the provisions on crimes, including war crimes and crimes against humanity. He has also served on the preparatory commission for the establishment of the ICC, with particular responsibilities for the definition of the crime of aggression. He has served on several committees of experts of the International Committee of the Red Cross (ICRC), including those on Internal Strife, on the Environment and Armed Conflicts, and on Direct Participation in Hostilities Under International Humanitarian Law. He was also a member of the steering committee of ICRC experts on Customary Rules of International Humanitarian Law. He is a member of the “Panel of Eminent Persons within the Swiss Initiative to commemorate the 60th anniversary of the Universal Declaration of Human Rights.”

He has been a Carnegie Lecturer at The Hague Academy of International Law, Fellow of the Rockefeller Foundation, Max Planck Institute Fellow (Heidelberg), Sir Hersch Lauterpacht Memorial Lecturer at the University of Cambridge, and Visiting Fellow at All Souls College, Oxford. He has lectured at many universities and at the International Institute of Human Rights (Strasbourg). He helped establish the ICRC/Graduate Institute of International Studies Seminars for University Professors on International Humanitarian Law. He leads the annual ICRC seminars for U.N. diplomats on International Humanitarian Law at NYU, and in the past led such seminars in Geneva. He is a member

of the Institute of International Law. He was awarded the 2005 Rule of Law Award by the International Bar Association and the 2006 Manley O. Hudson Medal of the American Society of International Law. He was made Officer of the Legion of Honor by the President of France in 2007.

His books are *Investment Insurance in International Law* (Oceana-Sijthoff, 1976); *The United Nations Secretariat* (Lexington Books, 1977); *Human Rights in International Law* (Oxford University Press, 1984); *Human Rights Law-Making in the United Nations* (Oxford University Press, 1986) (awarded the certificate of merit of the American Society of International Law); *Human Rights in Internal Strife: Their International Protection* (Sir Hersch Lauterpacht Memorial Lectures, Grotius Publications, 1987); *Human Rights and Humanitarian Norms as Customary Law* (Oxford University Press, 1989); *Henry's Wars and Shakespeare's Laws* (Oxford University Press, 1993); *Bloody Constraint: War and Chivalry in Shakespeare* (Oxford University Press, 1998); *War Crimes Law Comes of Age: Essays* (Oxford University Press, 1998), and *International Law In the Age of Human Rights* (Martinus Nijhoff, 2004). His latest book, *The Humanization of International Law*, appeared in 2006 (Hague Academy of International Law and Nijhoff).

A frequent contributor to the *American Journal of International Law* and other legal journals, he delivered the 2003 General Course of Public International Law at The Hague Academy of International Law.

## INTRODUCTION

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In his essay on “Crimes and Accountability in Shakespeare,” Judge Theodor Meron explains how “Shakespeare’s plays advocate a society in which the law should be respected and leaders held to high standards of civilized behavior. . . . He emphasizes moral duties and the role of conscience as a guide to civilized behavior by the leader and the citizen.”<sup>1</sup> The same could be said about Judge Meron himself, as someone who has helped to establish the standards of civilized behavior and law in his capacities as the president of the International Criminal Tribunal for the former Yugoslavia (from 2003-2005), as a presiding judge of the Appeals Chamber of the International Criminal Tribunal for Rwanda, and as a scholar and teacher of international law at New York University’s School of Law. For Judge Meron, jurisprudence takes both theoretical and practical form, as his scholarship in international law both informs and is informed by an active engagement in the field of human rights on a global scale.

Judge Meron’s words resonate with the purpose of the Haskins Prize Lecture. When John William Ward became president of the American Council of Learned Societies in 1982, he sought to commemorate the ACLS tradition of commitment to scholarship and teaching of the highest quality with an annual lecture. Each year since, we have asked the lecturer

“. . . to reflect on a lifetime of work as a scholar, on the motives, the chance determinations, the satisfactions (and the dissatisfactions) of the life of learning, to explore through one’s own life the larger, institutional life of scholarship. We do not wish the speaker to present the products of one’s own scholarly research, but rather to share with other scholars the personal process of a particular lifetime of learning.”

Judge Meron's lecture is the twenty-sixth in this series, which is named for Charles Homer Haskins, the first chairman of ACLS. It is the responsibility of the Executive Committee of the Delegates of ACLS to nominate each year's Haskins lecturer. After searching deliberations, the delegates fixed firmly and enthusiastically on Theodor Meron as someone who is not only a leading figure in the scholarship of international law but also deeply committed to its practice and development today. He helped establish the International Criminal Court and draft its provisions on crimes. His signal academic contributions to the history of international law, particularly human rights law, are thus matched by preeminent judicial work that draws upon his knowledge and expertise actively to address one of the most challenging legal issues of our time: bringing international law to bear on those charged with criminal acts against citizens of their own countries. Judge Meron's distinguished career bears witness to the values that we share within the academy and with the larger, global community.

This volume includes a biographical sketch of this tremendously active scholar and jurist, so there is no need for me to list his many achievements. What I would emphasize is his sustained effort to move beyond boundaries—both those of nations and of disciplines—to bring people together to explore common concerns and causes. While Judge Meron has been a steadfast advocate of the establishment of international humanitarian law, he also has been equally devoted to bringing the law and other fields in the humanities into critical conversation with each other, as his rich scholarship on the laws of war and chivalry in Shakespeare's plays demonstrates. Judge Meron's work transcends intellectual and international boundaries to underline our responsibilities to our fellow human beings.

Judge Meron modestly concludes his essay "Crimes and Accountability in Shakespeare," which is just one of his numerous works on Shakespeare and law, with a quotation from George Bernard Shaw's *The Dark Lady of the Sonnets*: "He that maketh the songs of a nation is mightier than he that maketh its laws."<sup>2</sup> In Judge Meron's case, we might give both activities

equal importance, as his work is evidence that those who pursue justice enable those who make songs and plays to live, write, and thrive—in peace and in freedom—thereby enriching all of our lives.

Theodore Meron has not only helped build the legal foundations for international criminal tribunals; he has worked to help us understand both the origins and the imperatives of modern international human rights. We are fortunate that he has shared—the story of his life of learning.

—Pauline Yu, President  
American Council of Learned Societies

## Endnotes

1. Meron, Theodor. “Crimes and Accountability in Shakespeare.” *The American Journal of International Law* 92.1 (1998): 39. Print.
2. “Crimes and Accountability,” 40.

THEODOR MERON

*A Life of Learning*

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I am deeply honoured by the invitation to deliver the twenty-sixth Charles Homer Haskins Prize Lecture, particularly because it was extended this year—exceptionally, I believe—to a jurist who became a full-time academic only at the age of 48.<sup>1</sup> I hope that this award represents a broader trend for the rapprochement not only between law and humanities, but also between the professions and the academy.

The uniform topic assigned to the Haskins Lectures, “A Life of Learning,” is particularly challenging because it compels an inquiry into the private domain, the piercing of the veil on essentially private experiences: motivation, achievement, and failure. Striking the right balance between self-satisfaction and saying something that may be of interest to this distinguished audience is quite a challenge. But there is no question that what we write and when we write can only be explained by our own life experiences. Avoiding autobiography would depart from the tradition of the Haskins Lectures and would provide an artificial and disingenuous reading of my work.

This leads me to the inevitability of some personal comments. I was born in 1930 in a small town in Poland to a middle-class Jewish family and had a happy but, alas, short childhood. By the age of nine I was out of school for the duration of the war. Ghettos and work camps followed, with most of my family falling

victim to the Holocaust. When the war ended, I emerged, lucky to be alive, with a hunger for school, for learning, for normality. In 1945, I left Poland for Palestine and faced the daunting task, never quite achieved, of catching up with six lost years. High school and military service followed, then studies at the law schools of the University of Jerusalem, Harvard University, and the University of Cambridge. At Jerusalem I started focusing on international law. At the two Cambridges I worked on hardly anything else. Jerusalem gave me a solid legal foundation, but I found the old-fashioned educational system, largely based on memory, to be uninspiring. It was at Harvard, with its analytical method, that I became comfortable with the law, especially international law, and knew it was to be my vocation. The imprint of the war made me particularly interested in working in areas which could contribute to making atrocities impossible and eliminating the horrible chaos, the helplessness, and the loss of autonomy which I remembered so well.

At Harvard, I was fortunate to become a student of and research assistant to two masters of international law—one specializing in humanitarian law and the law of war, the other in human rights—who became my mentors and models, and with whom I worked on an attempted codification of the law of state responsibility. They were Richard Baxter, later a judge of the International Court of Justice, and Louis Sohn. As it happened, much of my later scholarship and practice found expression in these areas. My World War II experience was never far away. When in Cambridge, England, as a Humanitarian Law Scholar, I was approached by another person to whom I owe a great deal of my legal education: Shabtai Rosenne, the legal adviser of the Israeli Foreign Ministry. He offered me a job, which I accepted. I would have preferred an academic job, but none was in sight. I stayed in the Israeli foreign service for about 20 years, resigning in 1977 and moving permanently to the United States, where I joined NYU School of Law as a professor of international law.

I have of course been very, very lucky. My life provided me with unusual experiences and my writings grew out of these windows of opportunity. Yet, looking back, I can see something

imperfectly resembling an integral whole emerging from the discrete segments. That does not mean that the goal of complete coherence was achievable or even desirable. A combination of chance and seized opportunity has been critically important. The situation, the circumstances, the needs, the institutional compulsions are often the controlling factors. But when the opportunity arose, I chose activities that fit my chosen purposes.

The Israeli Foreign Ministry provided me with invaluable experience writing legal opinions, participating in international conferences, and litigating cases. It helped me gain a practical perspective. Soon after my arrival in Jerusalem, I joined the team suing Bulgaria before the International Court of Justice in the case of the Aerial Incident of 27 July 1955 during the height of the cold war. It was a tragic case, in which an El Al passenger plane strayed over Bulgaria and was shot down, causing the death of all the passengers and crew. Bulgaria contested jurisdiction and admissibility, and the claim was dismissed. One of the more interesting legal issues was whether in such a case, where the contact with the territorial state was not deliberate and voluntary, there was an obligation for the claimant to exhaust local remedies in Bulgaria before suing before the international court. In an article published in the *British Yearbook of International Law* in 1959, I argued that there was no such obligation and suggested parameters for the applicability of the doctrine of local remedies. I had already published law review articles based on my studies at Harvard and my doctoral dissertation, but the local remedies article was the first in which my practice resulted in a discrete contribution to the theory of international law.

In 1961, I joined the Permanent Mission of Israel to the United Nations in New York. As a representative on the Fifth Committee (Administrative and Budgetary), most of my work was on administrative problems of the United Nations and its Secretariat. I became concerned about the growing politicization of the Secretariat, its slide from an international to a multinational institution, the discrimination against women, and the

absence of adequate due process provisions. My first articles on the Secretariat quickly followed.

My U.N. period ended with the Six-Day War in June 1967, a traumatic period in which, from the perspective of a diplomat in New York, the future and the survival of Israel were very much at stake. In June, shortly after the fighting was concluded with a victory for Israel, I was offered the job of the Legal Adviser of the Foreign Ministry in Jerusalem to succeed Shabtai Rosenne, who was being moved to New York. It was in many ways a baptism of fire. Within weeks of my arrival in Jerusalem, I was requested to advise the Prime Minister as to whether the establishment of civilian settlements in the occupied West Bank, the Golan Heights, and in Gaza was allowed by international law. In a secret legal opinion recently brought to light by the historian Gershom Gorenberg in *The New York Times*,<sup>2</sup> and subsequently reported by Donald Macintyre in *The Independent*<sup>3</sup> and Christiane Amanpour on CNN, I wrote that the establishment of civilian settlements violated the Fourth Geneva Convention as well as private property rights of the Arab inhabitants. The government chose to go another way and a wave of settlements followed, making the prospects for a political solution so much more difficult. Although I knew that this was not the kind of opinion that the Prime Minister wanted to receive, I had no doubt that legal advisers must be faithful to the law. To the credit of the Israeli government, I must note that there were no repercussions, of which I was aware, from my unpopular opinion. Of course, the opinion fit naturally into my interest in human rights and humanitarian law. It dealt not only with rights and obligations of states, but with rights of inhabitants.

In 1971, I became Israel's ambassador to Canada, a position I held until 1975. This was a period in which I had time to write and to teach part time at the University of Ottawa. During this period I wrote my first articles for the *American Journal of International Law*, of which Richard Baxter was editor-in-chief.

Over the years, the *American Journal* became the principal vehicle for publishing my writings; indeed, articles in the *Journal* at times preceded publication of books on the same subjects. I was honored to serve as co-editor-in-chief of the *Journal* in the 1990s. During those years in Ottawa, I wrote my first book, *Investment Insurance in International Law* (1976), partly because of my interest in the law of state responsibility and partly to prove to myself that I am capable of writing a technical book on the law.

During that period, the call of academia was becoming irresistible. I obtained a year's leave from the Foreign Ministry to go to New York on a grant from the Rockefeller Foundation to write a book about the U.N. Secretariat, *The United Nations Secretariat: The Rules and the Practice* (1977). My research also provided material for articles in law journals. The merit principle, the need to depoliticize, due process, and women's rights were among the principal topics covered. Of course, I was building on the experience I gained as a representative on the General Assembly's Fifth Committee. During that period, I also taught at NYU Law School, and was soon invited to join the full-time faculty.

This was a difficult and critical period in my life. I was looking for ways to leave the foreign service and to enter the academy. NYU was beckoning, but I was 48 and still a bit uncertain what I should be doing in my future life. After a short period as Permanent Representative to the United Nations in Geneva, I resigned from the Israeli Foreign Ministry and NYU became my intellectual home. I found the shift exciting but also a bit terrifying.

Upon my appointment to the NYU faculty, the question came up about my principal teaching subjects. At that time, human rights was not regularly taught, though the Law School benefited from some teaching of human rights by visiting professors. There was clearly student interest in the subject, and the Law School recognized a need for a regular human rights course offering. I was asked to focus on human rights, and somewhat nervously prepared to teach in what for me was still rather uncharted

territory. My background in international law was in state responsibility, treaties, and humanitarian law (to which I was exposed in Israel). My knowledge and experience in human rights were, however, thin. I should perhaps explain briefly that humanitarian law deals with protection by a foreign government of civilians and combatants belonging to the adversary and applicable in time of armed conflict or war. Human rights concern protection of individuals against their own authorities or governments primarily in times of peace, though the law has been expanding to require respect for human rights in time of armed conflict as well.

Teaching human rights proved a blessing, offering a major writing topic and a natural partner to international humanitarian law. My books *Human Rights Law-Making in the United Nations* (1986), *Human Rights in Internal Strife* (1987), *Human Rights and Humanitarian Norms as Customary Law* (1989), and eventually *Humanization of International Law* (2006), the book that is closest to reflecting the quintessence of my work, were made possible by an integrated approach to human rights and humanitarian law, and by grounding both in general theory of international law. It seemed to me obvious that repression of human dignity occurs in a continuum of situations of strife, from normality to full-blown international war, and that all these situations must be taken into account to provide a maximum of protection to human beings. I also dissented from the tendency in academic quarters and NGO's to treat human rights and humanitarian law as *sui generis* disciplines, and have always insisted on treating them as parts and parcels of general international law. Only thus would they find a place in the general theory of international law. I admit I am a generalist at heart, resenting overspecialization in segments of international law.

NYU provided me with a friendly, nurturing environment for teaching, research, and my more activist or practice-related activities. I continued to write in the fields of international administrative law, human rights and humanitarian law, and, increasingly, international criminal law, as well as on Shakespeare and chivalry, on which I will say a few words later. Apart from Shakespeare, most of my other academic interests were closely

related to my extracurricular activities. I tried to make them from one cloth, as seamless as possible.

My work with the International Committee of the Red Cross, an organization for which I have always had a great admiration, could now begin in earnest. It became a major vehicle for deeper involvement in humanitarian law. Although I was active in a number of human rights organizations, especially Human Rights Watch, my work with the ICRC was continuous and more intensive. I developed and led an annual ICRC/NYU seminar for U.N. diplomats on international humanitarian law; the seminar eventually became an established tradition that recently celebrated its silver anniversary. I have always thought that teaching should not be limited to the academy in the narrow sense, but should be directed to governmental officials and decision makers.

My additional appointment as professor at the Graduate Institute of International Law in Geneva for the years 1991-1995 facilitated further work with the ICRC. I began to conduct periodic seminars on humanitarian law in Geneva for young university teachers from all over the world. My involvement in ICRC groups of experts—including the group on internal strife, on the environment and armed conflicts, on direct participation in hostilities, and on customary rules of international humanitarian law, of which I was a member of the steering committee and one of the rapporteurs—was both demanding and rewarding. The project on customary rules, which required a significant multi-year commitment, fit my academic interests perfectly, especially as it followed *Human Rights and Humanitarian Norms as Customary Law*.

The committee on internal strife was, in part, triggered by my advocacy of a declaration of minimum humanitarian standards. When I was first settling in at NYU, an invitation arrived to present a paper at a Red Cross conference in Hawaii on the relationship between human rights and humanitarian law. My work on the paper led me to believe that the separate treatment of humanitarian and human rights law left a gaping hole in available protections. In my paper in Hawaii and in follow-up papers for the *American Journal of International Law*, I argued that the

conventions on international humanitarian law protect victims of international wars, but offer only very limited protections to victims of internal armed conflicts and strife. Moreover, disputes on characterization of conflicts create opportunities for states to evade the law altogether. Human rights treaties protect individuals from abuses in time of peace, but many of these protections may be derogated on grounds of national emergency. In some situations, non-governmental actors exercise control over people while denying that they are bound by international standards. There was thus a significant gap between humanitarian and human rights instruments to the detriment of victims. As a partial remedy, I proposed the adoption of a declaration of minimum humanitarian standards that would state norms capable of filling that gap for all situations of strife. I was grateful to Oscar Schachter and Lou Henkin, the editors of the *Journal* at the time, for publishing an article that challenged so many sacred cows. I pursued these ideas in my Hersch Lauterpacht Memorial Lecture on “Human Rights in Internal Strife” at the University of Cambridge.

One of the joys of law as a discipline is that it allows a give and take within the profession—the chance to use the profession, which is naturally fluid, to overcome the stark barriers put up by the academic and organizational division of subjects. Fortunately, Alexandre Hay, the president of the ICRC, expressed interest and the first consultations of experts started, eventually resulting in the text of the so-called Turku declaration (1990). But the proposal encountered opposition. Some opponents feared that a non-binding declaration would dilute existing legal commitments under the treaties in force; others felt that the declaration went too far in trying to impose additional obligations, albeit of non-binding character. Eventually the project went into a deep coma, but the basic idea that drove it is still very much alive. Since then, the world seems to have moved in the direction envisaged by the project, not through the force of a central idea or principle, but through the ICRC project on customary law, the statutes and the jurisprudence of international criminal tribunals, and the work of people everywhere to promote accountability and fight impunity. All of these contributed to

expanding the applicability of protective norms to national conflicts and strife. What happened was a kind of bottom-up transition from the field and practice to theory.

Throughout my life, I litigated and advised on only a small number of cases, including two before the International Court of Justice. One case I argued arose from my continuing interest in international administrative law and women's rights. In 1990, Jacqueline Dauchy, a French national working for the United Nations, asked that I represent her before the U.N. Administrative Tribunal in a case against the U.N. Secretary-General. She had expressed interest in being considered for the post of director of the Codification Division, for which she was fully qualified. That post, however, had been traditionally held by a national of the Soviet Union, and the Secretary-General in effect restricted eligibility to nationals of that country. This was an offer I could not refuse. The judgment that Dauchy won limited the sway of the practice of national preserves and helped both men and women in the Secretariat to be considered on the basis of individual merit.

When I moved to the United States in 1978 and joined the faculty of NYU law school, I had to start my life almost from scratch. I found the opportunities given by NYU, the academic community, and the country to be wonderful. In 1984 I became a citizen. I was grateful for the welcome I was given by my adopted country and was looking for an opportunity to make a contribution. I was therefore particularly pleased when, in 1990, the government invited me to be a public member of the U.S. delegation to the Conference on the Human Dimension of the CSCE (Conference for Security and Co-operation in Europe), held in Copenhagen under the distinguished leadership of Ambassador Max Kampelman.

Additional assignments eventually followed. In 1998, I was invited to join the U.S. delegation to the Rome Conference on the Establishment of an International Criminal Court, where I was involved in negotiating the provisions on war crimes and

crimes against humanity. I could not believe my luck. Suddenly, I could deal with major countries on issues of fundamental importance and, as a representative of the United States, have some impact on the emerging provisions.

A few years later, while visiting at the University of California, Berkeley, I was invited to work with the State Department on the Oil Platforms Case before the International Court of Justice, which concerned armed incidents with Iran during the first Gulf War. Soon thereafter I was appointed Counselor on International Law in the State Department, a post I held in 2000-2001. As counselor, I was involved in negotiations, litigation, and advising. During my counselorship I was nominated by the U.S. Government and elected by the United Nations to be a judge at the U.N. war crimes tribunal at The Hague.

My judgeship became the most exciting and rewarding assignment in my life. It required a change of instincts, of intuitions, of habits of work. It allowed me to put into practice my personal commitment to accountability, rule of law, due process. I know how terribly fortunate I have been in becoming an international criminal judge so late in life, when most people would be retired or planning to retire.

The departure from the academy was more than rewarded by judicial activity. Scholarly activity was not entirely abandoned; it metamorphosed into something else. My position required me to address a myriad of new problems in a focused and precise way. I am grateful to my colleagues and particularly my wonderful law clerks, who had clerked in the U.S. Supreme Court and the D.C. Circuit Court before coming to The Hague, for making this immense task of learning so much easier. This transition allowed me to take part in the most exciting literature of all: writing the jurisprudence of international criminal law, such as the seminal Srebrenica case of General Krstić, which established that genocide can be committed even in a circumscribed geographical area, and the Kunarac case, which defined rape and sexual slavery as crimes against humanity.

In 2003, my colleagues, the judges, elected me president of the Tribunal, a post I held for about three years. Being president required me to preside over most appeal cases, to manage the institution, to provide leadership for the judges, to represent the Tribunal, to appear before the Security Council and the General Assembly, and to meet with the U.N. Secretary-General and with the leaders of the countries of the former Yugoslavia and of other states. It was a demanding job from which I could never disengage, but I found it truly exciting. My main disappointment was with the failure of the leadership of Serbia to deliver General Mladić for trial at The Hague. I was hoping, perhaps naively, that my several meetings with Prime Minister Kostunica would produce results. They did not.

Let me turn to the last part of my lecture: Shakespeare. If my work on general international law, human rights, and humanitarian law represented a commitment or mission, my work on Shakespeare was pure love and excitement. Like most things in my life, it resulted from chance. In 1989, I was at All Souls College, University of Oxford, as a visiting fellow. My wife was also at Oxford and used her time to follow courses on Shakespeare, who had always been her great literary hero. She discovered the law of war in Fluellen's comment to Gower in *Henry V*: "Kill the poys and the luggage! 'Tis expressly against the law of arms." She suggested I write on the origins of law of war in Shakespeare. After initial resistance, reasonable for a person whose relevant knowledge was limited to *Macbeth*, I went to see Laurence Olivier's and Kenneth Branagh's films of *Henry V* and soon became a born-again amateur Shakespearean.

A second period as a visiting fellow at All Souls in 1991 allowed me to read intensively medieval history and the chroniclers, essential for understanding the context for Shakespeare's histories on which I focused. Oxford medieval historians, and especially Maurice Kean, generously offered advice and guidance. In 1992, I published my first article on this topic, "Shakespeare's Henry the fifth and the Law of War," in the *American Journal of International*

*Law*; it was followed in 1993 by my book *Henry's Wars and Shakespeare's Laws* and, in 1998, by another book, *Bloody Constraint: War and Chivalry in Shakespeare*. My work on Shakespeare was facilitated by the support of NYU, which encouraged involvement of faculty members in humanities. I also started teaching law and literature and was pleased by my students' enthusiasm for the subject. There followed articles on Gentili and Grotius and on the authority to make treaties in the Middle Ages, and later on leaders, courtiers, and command responsibility in Shakespeare. I felt I would have been a happy medieval historian, had I followed a different path.

In *Henry's Wars*, I tried to provide a humanitarian lawyer's commentary on the law-of-war issues arising in Henry V's French campaigns. My goal was to illustrate the law's evolution and to show how Shakespeare used the law of nations for his dramatic purposes. In *Bloody Constraint*, I moved on from the laws of war to broader issues of chivalry. My task required an exploration of the values of chivalry that sustained and reshaped the customs of war in the Middle Ages and the Renaissance, values that continue to surface in the legal, moral, and utilitarian arguments configuring the Geneva and The Hague Conventions and the laws and practices of war today. More than anything else, chivalry meant the duty to act honorably, in peace as in war. Indeed, chivalry's role was not limited to war. It implies an all-important code of behaviour for the civil society. Its legacy continues to shape our contemporary law and values.

One of my more gratifying (and serendipitous) experiences as a scholar came when the director of Shakespeare in the Park took note of my book *Henry's Laws and Shakespeare's Wars*. Although many productions have tread lightly around the horrific slaughter of the English P.O.W.'s in Agincourt (*Henry V*), he was persuaded that the atrocity was a central part of the narrative, one that speaks to us even more powerfully today. *The New Yorker* featured an article, "Take No Prisoners" by Lawrence Weschler, about this paradigm shift, and I was happy to make a contribution towards this new reading of Shakespeare.

Not a literary critic, I did not purport to write as one. Rather I wrote as a scholar of humanitarian law with an interest in history and literature. I focused not on Shakespeare the poet and dramatist, but mostly on Shakespeare the student of the chroniclers and of Plutarch and Homer, a humanist who had an acute understanding of the affairs of state and war. Above all, I wrote about a dramatist whose characters articulate a moving call for civilized behavior, for mercy and quarter, and for moral responsibility, and whose plays are a powerful instrument for illuminating the humanitarian principle as an ideal for all times.

I tried to show how Shakespeare's characters attempt to discourage war through legal, moral and utilitarian arguments, and through irony and sarcasm, as in the famous soliloquy by Canterbury in *Henry V*, where Shakespeare lays bare self-serving and hypocritical assertions of just war. In *Hamlet*, he highlights the futility and emphasizes the inevitable cruelty and cost of war. Consider the moving exchange on war in *Hamlet*:

CAPTAIN. We go to gain a little patch of ground  
That has in it no profit but the name.  
To pay five ducats, five, I would not farm it

HAMLET. To my shame I see  
The imminent death of twenty thousand men  
That, for a fantasy and trick of fame  
Go to their graves like beds, fight for a plot  
Whereon the numbers cannot try the cause,  
Which is not tomb enough and continent  
To hide the slain.

I have already disclaimed any competence in literary criticism. I have therefore avoided literary methodologies and their consequences for literary interpretation. But I have recognized the historicist's concerns and have tried to situate Shakespeare's text in its cultural and political environment, relating it to Tudor and Renaissance societies. I understood that Shakespeare's characters speak with a hundred voices and that there is hardly a text that could not be understood in different, sometimes contradic-

tory, ways. While risking accusations of simplification, I found it worthwhile, nevertheless, to derive from those voices certain themes of chivalry which I dared think were Shakespeare's own.

As I said at the outset, I am reluctant to view my academic journey as one that has taken me along a single path to a single goal. I should be profoundly disappointed if that had been the case—so many of the most rewarding experiences are the result of serendipitous diversions. But in many ways, the title of my book *Humanization of International Law* could describe the overarching theme of my life's work. My interest in international law evolved from a relatively narrow focus on notions of state responsibility to encompass humanitarian law and human rights law, and my fervent desire to integrate these disciplines. I have been blessed to be able to pursue my intellectual passions both in the world of the academy, where we enjoy the luxury of exploring Shakespeare and crafting pristine theories, as well as in the nitty-gritty world of handling cases and negotiating instruments of international law. My time as a judge on the international tribunal has been the best of both worlds—shaping doctrines that often have an academic flair but always with an eye toward their impact on real peoples' lives. My hope is that in some small way, these endeavors have contributed to our thinking critically about how to create a more humane world.

Time has come to end this discussion. Given my own age, it is natural that I would think of Jacques' seven ages of men in *As You Like It*. Whatever my present frailties, my judgeship legitimizes situating me in the fifth age: "the justice, in fair round belly with good capon lined . . . full of wise saws and modern instances, and so he plays his part." It is the future, represented by the sixth and the seventh ages, which is more frightening. For the time being, my intense work, new interests and projects, and helpful genes may delay somewhat the inevitable coming of the seventh age:

Last scene of all,  
That ends this strange, eventful history,  
Is second childishness and mere oblivion,  
Sans teeth, sans eyes, sans taste, sans everything.

I thank you for your patience and for the honor you have  
bestowed upon me.

## ENDNOTES

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1. I am grateful to my law clerk Jean Galbraith for her invaluable help.
2. Gorenberg, Gershom. "Israel's Tragedy Foretold." *New York Times* 10 Mar. 2006, Editorials/Op-Ed. Web.
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