Elements of a system of international criminal justice abound on the contemporary world stage. Radovan Karadzic, the former president and commander of the Bosnian Serb Republic, the defiant architect of the 1995 Srebrenica massacre of approximately 8,000 Bosnian Muslim men and boys, is in the dock in the Hague, before the International Criminal Tribunal for the Former Yugoslavia, facing 11 charges of war crimes, including two counts of genocide. On March 14, 2012, in the same small Dutch city, the International Criminal Court (ICC) delivered its first judgment—a unanimous finding of guilt for war crimes—against Thomas Lubanga Dyilo, leader of the Patriotic Forces for the Liberation of the Congo, who conscripted boys and girls under 15 and deployed them as front-line soldiers in the brutal civil war in the Democratic Republic of Congo. For the first time in history, an exploiter of child soldiers is being punished. Muammar el-Qaddafi was indicted by the ICC before he died, a fugitive in disguise—and as the deaths mount in Syria, world leaders have called Bashar al-Assad a war criminal, and the United Nations has recommended referral of his regime to the ICC for investigation. International accountability for attacks on unarmed civilians is no longer just the preserve of diplomats, jurists, or law scholars. Millions have watched the American-student-produced video Kony 2012, documenting the brutality of the infamous commander of the Lord’s Resistance Army in Uganda.

Twenty years ago, those who questioned the viability of a permanent system of international criminal justice were considered hard-headed realists, puncturing the idealism of enthu-
sious but naïve human-rights advocates. Today, to argue that heads of state responsible for systematic brutality against civilian populations are shielded by “sovereign immunity” is to place oneself amid international pariahs. All the Missing Souls: A Personal History of the War Crimes Tribunals, by David Scheffer ’75, Brown-Helman professor of law and director of the Center for International Human Rights at Northwestern University School of Law, traces this remarkable political, legal, and diplomatic journey — what one expert calls “the biggest step forward in law since the Magna Carta.” A lucid, frank, and fascinating personal testimony, the book provides a key participant’s chronicle of the vital albeit deeply ambivalent role of the United States in building the existing international criminal justice system.

The story starts in early 1993, when Scheffer was appointed to lead the U.S. effort to establish what eventually became the International Criminal Tribunal for the Former Yugoslavia, the first war-crimes court created in the midst of the conflict it was charged with judging. The book ends in 2000, with the convoluted negotiations leading to the establishment of the so-called “Extraordinary Chambers in the Courts of Cambodia,” a “hybrid” court of Cambodian and international judges that started to gather steam during Scheffer’s term as U.S. ambassador for war crimes in the second Clinton administration. (The notorious commandant of an infamous Khmer Rouge prison finally entered the court for the first day of his prosecution in February 2009, 10 years after his arrest and more than 20 years after his crimes were committed.) Along the way, All the Missing Souls describes the unimaginable intricacies and obfuscations involved in addressing the Rwandan genocide, the brutal carnage in Sierra Leone, the second phase of Balkan atrocities in Kosovo, and the protracted negotiations culminating in the creation of the first-ever permanent International Criminal Court—despite the United States’ refusal to support it.

Several key themes emerge from the narrative. One is the tension between setting aside past pain in the interests of harmonious coexistence, on the one hand, and pursuing an accurate historical record for the sake of the victims or their survivors, on the other. Most striking is the ever-present...
tussle between justice and peace, as the author’s unshakable conviction that justice must and shall be done rubs up against the pragmatic imperative of saving lives at all costs, stopping torture, and reestablishing peace without other preconditions. For example, could Serbian leader Slobodan Milosevic persuade U.S. assistant secretary Richard Holbrooke to offer amnesty to Bosnian Serb leaders Ratko Mladić and Radovan Karadžić in return for a cessation of hostilities in Bosnia? Throughout the Dayton Peace talks, many observers, including the Yugoslav Tribunal prosecutor Richard Goldstone, concluded that “the United States was prepared to sacrifice justice for peace…. [and] that the Dayton negotiating team would not insist that the parties cooperate with the Yugoslav Tribunal.” Was that stance wise and justified—or a cynical abdication of responsibility?

In Rwanda, the stakes of achieving peace were if anything even higher. How should the imperative of arresting those responsible for unimaginable massacres measure up to the critical task of securing an end to the killing? As Scheffer tells it, while General Roméo Dallaire, the heroic Canadian commander of the UN Assistance Mission for Rwanda, was reporting that Hutu leaders were training their men “to kill Tutsi (at a rate of up to 1,000 Tutsi in 20 minutes)…. in Washington the unreasonable view that everything must relate to the peace process [between Tutsi and Hutu leaders] prevailed.”

Again and again, war-crime work is an unwelcome interference and complication in the business of dealing with govern-ments, particularly when the stakes are very high. Nowhere is this clearer than in the tragic history of the negotiations sur-rounding the civil war in Sierra Leone. As intoxicated child soldiers were mutilating civilians by the hundreds—chopping off hands, arms, ears, and legs—the international community entered peace talks with the rebels led by Liberia’s “charismatic and diabolical former president” Charles Taylor and his Sierra Leone counterpart, Foday Sankoh, despite the rebel insistence on unconditional amnesty. Scheffer describes a scene at Netland Hospital in Freetown, the capital of Sierra Leone, as the peace negotiations got under way in February 1999: “I visited with one teenage girl, ‘Nancy,’ whose eyes had been burnt out by pouring heated plastic into them. She was still traumatized from being gang-raped and refused to speak to anyone.”

Five months later, the Lomé peace agreement included an “absolute and free pardon” for Sankoh and for “all combatants and collaborators in respect of anything done by them in pursuit of their objectives…” up to the time of the peace agreement. The U.S. and British governments congratulated the parties and expressed their support for the agreement “which will bring to an end the tragic war of Sierra Leone.” Instead the rebels, apparently emboldened by their victory in securing immunity, resumed their butchery and the peace process imploded. It took more than two years for a new compromise to be negotiated—this time anchored by the creation of a special criminal court where leaders would be held accountable. But by the time the Special Court for Sierra Leone got around to handing down judgments, some of the key culprits, including Sankoh himself, had died. Only Charles Taylor was successfully indicted and put on trial. At this writing, the verdict on his case is expected on April 26, but procedural delays may yet again push the day of reckoning back.

The book also tackles the chess-like complexity of international diplomacy—the art of the possible—particularly complex for a principled actor such as the author. Charged with representing a su-

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**Representing the Race: The Creation of the Civil Rights Lawyer**, by Kenneth W. Mack (Harvard, $35). Professor of law Mack (a J.D. ’91 classmate of Barack Obama), a legal historian (he is also a Princeton Ph.D.), portrays the African Americans who took on segregation while dealing with the tension between their professional and personal identities, and the lingering issues of authenticity.

**Paris in Love**, by Mary Bly ’84, writing as Eloisa James (Random House, $26). If you cannot spend your spring in Paris this year, you can go, vicariously, via the author’s infatuated, episodic memoir of a sabbatical year with her family.

**No Citizen Left Behind**, by Meira Levinson, RF ’03 (Harvard, $29.95). From her teaching experience in an all African-American school in Atlanta, the author, an associate professor of education, came to perceive a civic-empowerment gap as powerful and debilitating as the urban academic-achievement gap. She prescribes activist civic education.


**The Ivy League**, by Daniel Cappello ’99 (Assouline Publishing, $65). “What is it about the Ivy League that makes it so intriguing, so appealing, so butterflies-inducing?” the author asks, in an album of stock photos, with his accompanying brief meditations on the distinctive character of each school in the Ivy brand.
perpower with a multiplicity of agendas, personalities, and strategic interests, he is forced to straddle a stated commitment to human rights and nondiscrimination, on the one hand, and a vigorous rejection of any scrutiny of American actions undertaken by international judicial entities, on the other. His narrative, depicting split-second decisions over key issues, the astute elaboration of multilayered negotiating tactics, and the excruciating obligation to forcefully present and defend positions diametrically opposed to one’s own, could pass as a terrific diplomatic primer.

This theme emerges with particular clarity in his account of the U.S. negotiating position during the final drafting conference for the statute establishing the International Criminal Court, held in Rome during the summer of 1998. Scheffer presents the complex and shifting diplomatic and legal terrain clearly and, at times, poignantly. Faced with the Pentagon’s insistence that U.S. military staff should never risk international criminal liability, Scheffer—who had dedicated his career to building an architecture of international criminal justice and accountability—had to press for a requirement that states give their consent prior to the prosecution of their nationals, a position that sounded “impractical” (surely an understatement!) to the rest of the world. In the end he was compelled to vote against the treaty in the company of China, Israel, Iraq, Cuba, Syria, and Yemen. To many observers and participants, he appeared, as he accurately notes, “the guardian of impunity rather than its slayer,” arguing on the same side as some notorious and persistent violators of human rights.

Some of the most interesting ideas in the book are surprisingly underexplored. For example, Scheffer suggests that the outcome of the Rome conference and the eventual participation by the United States in the ICC might have been different if the case for American exceptionalism had been presented more creatively. The imperative of U.S. government consent prior to any prosecution of U.S. citizens by the ICC was justified simply by reference to the country’s national security and economic interests—an argument, Scheffer implies, that could be advanced by any country. Instead he suggests America’s changing role in a post-Cold War world, as a key player in international humanitarian and peacekeeping missions with unparalleled global troop deployments, would have constituted a much more persuasive argument to explain the unique risk of malicious or rogue prosecutions facing American leaders. I disagree. Other governments, and close U.S. allies such as the United Kingdom, also deploy sizable military contingents in challenging situations without calling for international immunity for their soldiers. Why should an international court not prosecute U.S. war criminals if the U.S. courts refuse to do so?

One of the most convincing legal arguments is made at the end of the book. In a short postscript, Scheffer advances the powerful suggestion that the term “atrocity crimes” should replace the complicated and confusing trinity of genocide, war crimes, and crimes against humanity as a unified category underpinning international criminal culpability. The egregious failures in Rwanda, he suggests, might have been averted if critical time had not been wasted on vacillations over what constituted genocide. But maybe not. The most enduring and sobering message of All the Missing Souls is that—unless the most powerful players in international military actions insist otherwise—international criminal justice is always at the bottom of the list.

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