Prepublication praise for
Model Codes for Post-Conflict Criminal Justice

The publication of volume I of Model Codes for Post-Conflict Criminal Justice marks an advance of great international significance for post-conflict societies—the arrival of a criminal code drafted in admirably clear and uncomplicated language, supported by detailed commentaries, and designed explicitly for such societies. This code, with its measured approach, will enable jurisdictions emerging from conflict to move quickly toward reestablishing the rule of law and a fair criminal justice system, without the need to start the reform process afresh. It is an outstanding piece of work, and the publication of volume II later this year is eagerly awaited.

—Andrew Ashworth, Vinerian Professor of English Law, University of Oxford

Countries in transition from conflict routinely face seemingly irreconcilable challenges: extremely limited capacity of the criminal justice system, the need to establish law and order in the midst of rising crime, and the need to comport with international human rights standards—all of which have to be tackled while respecting local culture and traditions. These challenges have vexed local governments and those in peacekeeping missions alike. Model Codes for Post-Conflict Criminal Justice provides, for the first time, an invaluable guide to addressing these multiple demands—and should help shorten the path to consolidated peace, functioning state institutions, stability, and the rule of law.

—Ambassador Lakhdar Brahimi, former Special Representative of the Secretary-General for Afghanistan, Haiti, and South Africa; and former Chairman, Panel on United Nations Peace Operations

Many post-conflict states, including Liberia, find it necessary to reform their judicial systems so that their laws deal effectively with crimes, address gender and human rights issues, and conform to international norms and standards. I am, therefore, grateful for the opportunity to have participated in this admirable project, which, after years of arduous legal research and drafting, has culminated in the publication of Model Codes for Post-Conflict Criminal Justice.

Model Codes for Post-Conflict Criminal Justice will be an immensely useful resource for reformers in Liberia and elsewhere as they engage in the development and reform of their criminal justice system. Its provisions, drawn from the laws of different states and drafted in plain English, may be used in drafting new criminal laws or amending existing provisions. The accompanying commentaries, as well as the references and other resources contained in this volume, provide invaluable background information and guidance.

—Felicia V. Coleman, Counselor-at-Law, former Associate Justice of the Supreme Court of Liberia, and a Member of the Task Force for the Establishment of the Law Reform Commission of Liberia
In post-conflict countries, the challenges involved in rebuilding the judicial system are great. A model penal code seems particularly necessary to ensure compatibility between national criminal laws and international norms and standards. More than merely reflecting cultural diversity, such an instrument would enable the harmonization of national and international norms around common values.

—Mireille Delmas-Marty, Professor and Chair of Comparative Legal Studies and the Internationalization of Law, Collège de France

The importance of this work for societies in transition from conflict and oppression to freedom and democracy cannot be overemphasized. It is a model of clarity, and the commentaries on each section are a valuable resource not only for practitioners concerned with societies in transition but also for students. I also commend it to journalists who work in the field of law enforcement.

—Richard Goldstone, former Judge, Constitutional Court of South Africa; and former Prosecutor, International Criminal Tribunals for the former Yugoslavia and for Rwanda

Model Codes for Post-Conflict Criminal Justice is a valuable resource for criminal law reform in post-conflict states. Its contents reflect recent advances in international criminal law instruments and draw on the accumulated knowledge and experience of the international criminal law community. Moreover, Model Codes takes into account the particular challenges presented by post-conflict countries, making it both a targeted and a practical tool.

—Ma Kechang, Professor of Law, Wuhan University, People's Republic of China

This first volume in the Model Codes series displays not only a remarkable depth of thought but also a commendable breadth of perspective. In this time of sharp cultural clashes, publics in the Middle East and elsewhere may regard Model Codes skeptically, as yet another Western export intended to supplant Muslim traditions. To its credit, however, the Model Codes Project has gone beyond the borders of Western legal expertise and sought substantive contributions from legal experts in the Muslim world. Such teamwork between scholars and practitioners from both Western countries and Muslim-majority countries is all too rare, and I hope that publication of Model Codes will help pave the way for an open, inclusive discussion on the dilemmas facing post-conflict societies, particularly those in the Middle East. And in Muslim-majority countries emerging from conflict, we now need to approach the lawyers working in the Islamic seminaries and further integrate them and the language of Islamic law into the dialogue. By doing so, we will help facilitate the process by which such states can transition from violence to an enduring peace rooted in the rule of law.

—Mohsen Rahami, Professor of Criminal Law and Criminal Policy, Faculty of Law and Political Science, University of Tehran
Model Codes for Post-Conflict Criminal Justice provides excellent guidance for the implementation of new criminal laws in post-conflict states. The statutory offenses as well as the general rules for criminal liability and the proposed catalogue of penalties, including alternative sanctions and measures such as asset confiscation and victim compensation, reflect the state of the art in international standards and best practices.

—Dmitry A. Shestakov, Professor, Doctor of Law, and President of St. Petersburg Criminology Club, Russia

It is axiomatic that conflict destroys: it destroys people, their institutions, and the law in whole or in part. But conflict also breeds new companions who evolve, thrive, and finally outlive the hostilities: welcome to the world of the war-profiteer. Organized and wealthy, these individuals, and their illicit networks, often emerge from conflict with political and social power, which they use to accumulate enormous fortunes, siphoning off the money pouring into the country and basking in the absence of regulatory and enforcement mechanisms that could check their rampant corruption and criminality.

Any attempt by the international community to rebuild a shattered society will lie in peril without the presence, early on, of institutions that promote and safeguard the rule of law. And central to the maintenance of the rule of law is the existence of a criminal code. In societies emerging from conflict, the local authorities may well deem part or all of the old code unworkable, resulting in a need to refashion some provisions of the existing code or identify a stop-gap measure to adopt until a new code can be established. After all, even from the earliest days of recovery, police, prosecutors, judges, peacekeepers, and most importantly the citizenry need both the assurance that there is a law and clarity as to what that law is.

Model Codes for Post-Conflict Criminal Justice provides a crucial resource to address this need. It reflects clearly the input of hundreds of experts and practitioners drawn from across the globe. The codes and their commentaries will be invaluable to local governments and peacekeeping missions involved in law reform, providing a clear legal framework that meets with international standards and is cognizant of the challenges that come with post-conflict environments.

Model Codes
for Post-Conflict Criminal Justice

Volume I
Model Criminal Code

Edited by Vivienne O’Connor and Colette Rausch
with Hans-Joerg Albrecht and Goran Klemencic

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Foreword

Louise Arbour, United Nations High Commissioner for Human Rights

Antonio Maria Costa, Executive Director of the United Nations Office on Drugs and Crime

Conflicts do not end suddenly. Even when violence stops, peace often remains fragile and will not become durable unless there is justice and a readiness to address not only the aftermath of a conflict but also its root causes. Many conflicts erupt because of perceptions of discrimination and injustice. Restoring the rule of law is, therefore, an important dimension of peacebuilding, one that requires sustained and patient engagement until the rule of law is strong. Where the rule of law is weak, public security is threatened and criminals feel empowered. Such a situation undermines efforts to restore respect for human rights and build democracy and civil society, it fuels crime and corruption, and it risks triggering a return to conflict. Criminal justice that is based on human rights is thus indispensable for making and sustaining peace.

The classic peacekeeping model brings to mind blue-helmeted soldiers working under the United Nations flag to restore order and maintain security. That kind of peacekeeping, while essential, will not by itself build durable peace. Long-term security depends first and foremost on the creation or restoration of the rule of law. The rule of law requires not just rule by law, but rule by laws that reflect fundamental principles of criminal responsibility and due process, including guarantees of transparency and clarity of the criminal justice process, nonretroactivity, fair and independent adjudication, and proportional punishment.

The United Nations Office on Drugs and Crime and the Office of the High Commissioner for Human Rights have therefore welcomed the initiative launched by the United States Institute of Peace and the Irish Centre for Human Rights to strengthen criminal justice in post-conflict societies, and have supported the project in several ways, including facilitating a number of experts’ meetings to review the draft Model Codes.

Publication of Model Codes for Post-Conflict Criminal Justice, the product of five years of work involving hundreds of experts from across the world, is a significant contribution to the United Nations’ efforts to strengthen peacebuilding. Based on United Nations standards, the Model Codes provide practical guidance on how to translate international human rights and criminal law standards into everyday practice.

There is no single recipe for effective criminal justice. The Model Codes are not a one-size-fits-all solution. On the contrary, they have been devised to be adaptable to a variety of post-conflict societies and situations in ways that are flexible yet consistent with international norms and standards. The Model Codes are a resource that should be used by all those engaged in building peaceful societies based on the rule of law.
Preface

Neil Kritz, Director, Rule of Law Program, United States Institute of Peace
William Schabas, Director, Irish Centre for Human Rights

According to the Oxford English Dictionary, a code is a systematic collection or digest of laws, a body of laws so arranged as to avoid inconsistency and overlapping. The first extant code, the Code of Hammurabi, was composed nearly four millennia ago. Justinian created a code with which to rule the Roman Empire. Many countries still operate with the legacy of these early efforts at legal codification. Historically, codes were an instrument of law reform, often intended to make the law more accessible and coherent. Over time, it has become universally recognized that an effective framework of criminal law and procedure is essential to the development of a stable society.

Although the codes presented in Model Codes for Post-Conflict Criminal Justice share many of the same objectives as other codifications, they also have some unique and original purposes. Essentially, they are designed as a tool for what is today often referred to as “post-conflict justice.” It is only recently that this has become a priority of the international community. Interest in the subject seems to have begun during the late 1970s and early 1980s, when human rights bodies began to focus on the duties of the state in terms of criminal justice. Soon, reports were circulating within the United Nations about the rights of victims, the need for accountability, and the fight against impunity. International standards and treaties were adopted to elaborate the human rights protections that had to be reflected in the administration of criminal justice.

In parallel, peacekeeping operations began to be increasingly robust, assuming responsibilities in a range of areas beyond the peacekeepers’ traditional role of policing cease-fire lines. Human rights divisions began to figure in peace support operations, as did a growing agenda for various measures to promote peace, stability, and political and economic recovery. One important item on this agenda was ensuring some degree of accountability for the crimes of the past while promoting a sense of security and law and order in the present. Stabilization efforts had to maintain social order as conflict was winding down, deal with the general breakdown of authority, and confront the criminal vultures who routinely descend upon the disorganization of the post-conflict environment, while still promoting values of tolerance, fairness, and transparency and adherence to international human rights standards so as to help nurture the beginnings of democracy.

The idea of creating model codes for post-conflict justice was much discussed at the end of the 1990s by rule of law practitioners working with United Nations peace operations in places such as Cambodia, East Timor, and Kosovo. In each of these environments, professional jurists found the criminal justice system in disarray and a need not only for infrastructural renewal but also for substantive law reform. The confusion as to what constituted the applicable law in these and other post-conflict settings and
how that law would be applied resulted in the loss of many crucial months in the stabilization effort. Public confidence in a peace process will be weak as long as that public faces rampant crime and an unfair justice system. Clearly, new tools were needed.

The model code concept received official recognition in the Report of the Panel on United Nations Peace Operations, often called the “Brahimi Report” after its distinguished chair, veteran diplomat Lakhdar Brahimi. The report saw model codes as an off-the-shelf legal system that could, if necessary, be applied as part of a peace support mission. Ambassador Brahimi’s proposal did not sit well with everyone, however, apparently because of concern that model codes would be a creeping form of judicial imperialism. At the very least, the proponents of the model codes concept needed to refine its focus, emphasizing the flexibility of what was intended as a palette of options rather than a prescriptive, one-size-fits-all package.


Initially, a small group of experts was convened to create a draft of the Model Codes. In recognition of the critical importance of widespread consultation and participation, the expert group soon mushroomed into a network of three hundred experts from all regions of the world, encompassing both academic and practitioner communities. The experts included comparative and international law experts, judges, prosecutors, defense counsel, police, human rights advocates, and military officers. The meetings were a stimulating venue for debates and exchanges about comparative criminal law, involving the differing perspectives of the prosecution, the police, the defense, and the judiciary.

What began as a single code soon morphed into four separate but complementary instruments. Published in three volumes collectively known as Model Codes for Post-Conflict Criminal Justice, these instruments include a Model Criminal Code, a Model Code of Criminal Procedure, a Model Detention Act, and a Model Police Powers Act. The first volume to be published features the Model Criminal Code.

The Model Codes reflect elements drawn from all of the major criminal justice systems in the world. They are strongly influenced by the comparative law discourse of the international criminal tribunals, as well as the practice of post-conflict justice in countries around the world. The vision of no single criminal justice system is allowed to predominate. Indeed, it was deemed essential that jurists from a variety of traditions would, so to speak, recognize themselves in the finished product, finding familiar concepts and terminology—which means, of course, that there is also much that is unfamiliar for practically everyone.

The Model Codes are a tool of assistance and not imposition. They expand the range of options available to drafters of post-conflict criminal laws. Of singular importance, the Model Codes are especially useful because they are tailored to the exigencies of the challenging post-conflict environment.

With apologies to Winston Churchill, this is not the end of the Model Codes Project, but rather the end of the beginning. Tools to be used in building post-conflict justice, the Model Codes are very much a work in progress, to be refined and amended,
more or less like all other codes. They will grow with our experience in this important endeavor of promoting justice, democracy, and peace.

We would like to express our appreciation to the editors, our partner organizations, and all those who have contributed to Model Codes Project.
Acknowledgments

The Model Codes for Post-Conflict Criminal Justice Project was launched in 2001 by the United States Institute of Peace and the Irish Centre for Human Rights, in cooperation with the United Nations Office of the High Commissioner for Human Rights (OHCHR) and the United Nations Office on Drugs and Crime (UNODC). For their unwavering commitment to such an ambitious project, from its initial conception to the publication of this volume, we are deeply grateful to the president of the United States Institute of Peace, Ambassador Richard Solomon; to the Institute’s associate vice president and director of its Rule of Law Program, Neil J. Kritz; and to the director of the Irish Centre for Human Rights, Professor William Schabas. Neil Kritz and William Schabas are due particular thanks for the wise advice and constant encouragement they provided throughout the project’s development.

We would like to thank our project partners, OHCHR and UNODC, for sharing the vision of creating a set of model codes to assist in the reform of the criminal justice systems in post-conflict societies. We are particularly grateful to David Marshall and Tiyanjana Maluwa of OHCHR and to Jo Dedeyne, Mark Shaw, Slawomir Redo, Eduardo Vetere, Dimitri Vlassis, and Catherine Volz of UNODC, all of whom worked directly with us and shared their time and expertise.

The work of translating the project’s ambitious goals into reality brought together a large community of experts in a truly collaborative effort. Each of these experts lent his or her skills and expertise freely, seeking no other reward than assisting national and international actors in rebuilding the rule of law in post-conflict societies. We often talk fondly of the “Model Codes family” that grew from a small group to encompass some three hundred people. The consultations and regional meetings that helped to clarify and amplify the text of the codes provided a unique opportunity for us to meet and become friends with a remarkable group of people dedicated to building peace. Every comment made, every question raised, and every suggestion put forward contributed to the breadth and depth of the final product. For this, we are grateful to everyone involved.

Our heartfelt thanks go also to those who acted as partners in regional consultation meetings, provided forums in which drafts of the codes were reviewed, gave presentations on the project, chaired consultation meetings, provided research assistance, reviewed the text of provisions, drafted commentaries, or facilitated our field research and consultations. This list of these generous and gifted people includes Ebba Abdon, Stuart Alford, Diane Amann, Kelly Askin, Louis Aucoin, Mohamed Abdel Aziz, Clive Baldwin, Elaine Banar, Cherif Bassiouuni, Karen Belgiovine, Krisna Boivornratanarak, Roger Clark, Tonya Cook-Pedersen, John Cubbon, Lynn Cuddington (who sadly passed away last year), Sylvia De Bertodano, Knut Doermann, William Durch, Rania

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As the following lists of organizations and individuals who contributed to the Model Codes Project make clear, great efforts were made to obtain the input of a diverse community of experts with knowledge and experience relevant to the post-conflict criminal law reform process. In all, some three hundred people from more than one hundred organizations and over fifty countries contributed to the Model Codes Project. Some helped to create the broad framework for the project, others drafted specific provisions and commentaries, still others critiqued and refined those drafts; all of them gave generously of their time and considerable expertise.

**International and Regional Organizations**

- African Commission on Human and Peoples’ Rights
- Council of Europe
- European Commission and European Council
- Organization for Security and Co-operation in Europe (OSCE)
- United Nations
  - Children’s Fund (UNICEF)
  - Department of Peacekeeping Operations (DPKO)
  - Department of Political Affairs (DPA)
  - Development Fund for Women (UNIFEM)
  - Development Programme (UNDP)
  - International Criminal Tribunal for Rwanda (ICTR)
  - International Criminal Tribunal for the former Yugoslavia (ICTY)
  - Office of Legal Affairs (OLA)
  - Office of the High Commissioner for Human Rights (OHCHR)
  - Office on Drugs and Crime (UNODC)

**Civil Society and Non-Governmental Organizations**

- AIRE Centre
- Amnesty International
- Asian Human Rights Commission
- Cambodian Defenders Project
• Criminal Defence Resource Centre, Kosovo
• Foundation for Law, Human Rights and Justice, East Timor
• Informal Sector Service Centre, Nepal
• International Center for Transitional Justice
• International Committee of the Red Cross
• International Development Law Organization
• Minority Rights Group
• National Forum for Human Rights, Sierra Leone
• Open Society Justice Initiative
• Penal Reform International

Professional Associations, Training Institutions, and National Commissions

• African Bar Association
• American Corrections Association
• Association of Female Lawyers, Liberia
• Commission for Reception, Truth and Reconciliation, East Timor
• International Association of Prosecutors
• International Corrections and Prisons Association
• International Criminal Defence Attorneys Association
• Joint Advisory Committee on Legislative Matters, Kosovo
• Justice Council, Institute of Training and Law Reform, Sudan
• Law Reform Commission Task Force, Liberia
• Liberian National Law Enforcement Association
• Kosovo Chamber of Advocates
• Magistrates School, Cambodia
• Nepal Bar Association
• National Human Rights Commission, Nepal
• Southeast Asia Regional Centre for Counter-Terrorism, Malaysia
• West African Bar Association

Research and Academic Institutions

• Academy of Military Science, China
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• Defense Institute of International Legal Studies, United States
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• Georgetown University, United States
• International Human Rights Law Institute, United States
• International Institute of Higher Studies in Criminal Sciences (ISISC), Italy
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• Irish Centre for Human Rights
• John Jay College of Criminal Justice, United States
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United Nations Mission of Support in East Timor (UNMISET)
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United Nations Stabilization Mission in Haiti (MINUSTAH)
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- Democratic Republic of the Congo
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- Fiji
- Germany
- Ghana
- Haiti
- Hungary
- India
- Iraq
- Ireland
- Jordan
- Kosovo
- Liberia
- Malawi
- Malaysia
- Mauritius
- Mozambique
- Nepal
- The Netherlands
- New Zealand
- Nigeria
- Pakistan
- Philippines
- Poland
- Romania
- Rwanda
- Sierra Leone
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**Abbreviations**

ICTR  International Criminal Tribunal for Rwanda
ICTY  International Criminal Tribunal for the former Yugoslavia
IPTF  International Police Task Force
KFOR  Kosovo Force (NATO-led international military force)
OHCHR  Office of the United Nations High Commissioner for Human Rights
OHR  Office of the High Representative
OSCE  Organization for Security and Co-operation in Europe
UNAMIS  United Nations Advance Mission in the Sudan
UNAMSIL  United Nations Mission in Sierra Leone
UNDP  United Nations Development Programme
UNDPKO  United Nations Development Fund for Women
UNICEF  United Nations Children’s Fund
UNIFEM  United Nations Department of Peacekeeping Operations
UMMIK  United Nations Mission in Kosovo
UNMIL  United Nations Mission in Liberia
UNMISET  United Nations Mission of Support in East Timor
UNODC  United Nations Office on Drugs and Crime
UNTAC  United Nations Transitional Authority in Cambodia
UNTAET  United Nations Transitional Administration in East Timor


This User’s Guide is divided into four chapters. Chapter 1 outlines the need for criminal law reform in post-conflict states, the evolution of interest in the topic among the international community, and the drafting and consultation process used to create the Model Codes. Chapter 2 discusses the many potential uses of the Model Codes in post-conflict criminal law reform efforts. Chapter 3 provides a synopsis of the Model Criminal Code. Chapter 4 sets out guiding principles for those involved in the process of criminal law reform.