

**ANNEX 2: Authority on State Practice in Relation to the Development of the Armed Conflict Nexus as an Element of Crimes Against Humanity in Customary International Law (1868 – Present)**

The purpose of this annex is to show the genesis of the armed conflict nexus requirement in the definition of crimes against humanity under customary international law through a survey of international instruments and national legislation.

NO.	NAME OF SOURCE	DATE	Nexus Requirement	SUPPORTING TEXT
	<b>YEARS: PRE-1945</b>			
1.	Declaration Renouncing the Use, in Time of War, of Explosive Projectiles Under 400 Grammes Weight, Saint Petersburg, entered into force 11 December 1868	1868	Yes (as CAH is developing)	<p>“On the proposition of the Imperial Cabinet of Russia, an International Military Commission having assembled at St. Petersburg in order to examine the expediency of forbidding the use of certain projectiles in time of war between civilized nations, and that Commission having by common agreement fixed the technical limits at which the necessities of war ought to yield to the requirements of humanity, the Undersigned are authorized by the orders of their Governments to declare...” (preamble).</p> <p>“That the employment of such arms would, therefore, be contrary to the laws of humanity.” (declaration).</p> <p><b>COMMENT:</b> The Nuremberg Charter’s inclusion of the armed conflict nexus in the definition of crimes against humanity reflects the evolution of crimes against humanity, which arose from the laws and customs of war in the late nineteenth and early twentieth centuries. Drafters of the Nuremberg Charter included a nexus to avoid allegations that the principle of legality had been violated. (IENG</p>

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				Sary's Appeal Against the Trial Chamber's Decision on Co-Prosecutors' Request to Exclude Armed Conflict Nexus Requirement from the Definition of Crimes Against Humanity, ("IENG Sary Appeal Against the Armed Conflict Nexus Decision"), para. 27).
2.	Hague Convention (II) with Respect to the Laws and Customs of War on Land and its Annex: Regulations concerning the Laws and Customs of War on Land, 29 July 1899	1899	Yes (as CAH is developing)	<p>“Animated by the desire to serve, even in this extreme hypothesis, the interests of humanity and the ever increasing requirements of civilization...” (preamble).</p> <p>“Until a more complete code of the laws of war has been issued, the High Contracting Parties deem it expedient to declare that, in cases not included in the Regulations adopted by them, the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience...” (preamble).</p>
3.	Hague Convention (IV) respecting the Laws and Customs of War on Land and its Annex: Regulations concerning the Laws and Customs of War on Land, 18 October 1907	1907	Yes (as CAH is developing)	<p>“Animated by the desire to serve, even in this extreme case, the interests of humanity...” (preamble).</p> <p>“Until a more complete code of the laws of war has been issued, the High Contracting Parties deem it expedient to declare that, in cases not included in the Regulations adopted by them, the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations, as they result from the usages</p>

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				<p>established among civilized peoples, from the laws of humanity, and the dictates of the public conscience.” (preamble).</p> <p><b>COMMENT:</b>  “The terms ‘crimes against peace’, ‘war crimes’ and ‘crimes against humanity’, although used in [the Charters of the IMT and Tokyo and Control Council No. 10] as technical terms, do not represent conceptions entirely novel or without precedent ... in connection with the development of the laws of war prior to the First World War, all references to ‘humanity’, such as ‘interests of humanity’, ‘principles of humanity’ and ‘laws of humanity’ as appear in the Fourth Hague Convention of 1907 and in the other documents and enactments of that period, have been used in a non-technical sense, and certainly not with the intention of indicating a set of norms different from the ‘laws and customs of war’, which are covered by the term ‘war crimes’ in the documents of 1945 and 1946.” (UN War Crimes Commission, <i>History of the United Nations War Crimes Commission and the Development of the Laws of War</i> (“<i>History of the UN War Crimes Commission</i>”) (1948), p. 188-89).</p>
4.	Declaration of the Governments of France, Great Britain and Russia, 28 May 1915	1915	Yes (as CAH is developing)	“In view of these new crimes of Turkey against humanity and civilization the Allied governments announce publicly to the Sublime Porte that they will hold personally responsible these crimes all members of the

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				<p>Ottoman government and those of their agents who are implicated in such massacres.” (p. 1).</p> <p><b>COMMENT:</b>            With this declaration, “[w]orld War I saw the international community take the first steps toward the creation of a specific <u>crime</u> called ‘crimes against humanity.’” (IENG Sary Annex: An Overview of Crimes against Humanity and Their Evolution in International Jurisprudence, 23 June 2010, D378/2.2, para. 3).</p>
5.	The Nyon Agreement, 14 September 1937	1937	Yes (as CAH is developing)	<p>“Whereas these attacks are violations of the rules of international law referred to in Part IV of the Treaty of London of 22 April 1930, with regard to the sinking of merchant ships and constitute acts contrary to the most elementary dictates of humanity, which should be justly treated as acts of piracy...” (preamble).</p>
6.	Belgium Decree (Arrêté), 13 December 1944 (as cited by <i>History of the United Nations War Crimes Commission</i> )	1944	Unclear	<p>“...numerous violations of the rules of international law and of the obligations of humanity (des devoirs d’humanité) have been committed by the invaders.” (p. 217-18).</p> <p><b>COMMENT:</b>            “In both the Belgian and Luxembourg statutes the term ‘obligations of humanity’...is hardly used in the technical sense in which the ‘crimes against humanity’ has been adopted in the (subsequent) London Charter to which</p>

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				both Belgium and Luxembourg eventually adhered.” (p. 218).
	<b>YEARS: 1945 - 1954</b>			
7.	Roumanian Decree-Law, April 1945 (as cited by the <i>History of the UN War Crimes Commission</i> )	1945	Unclear	<p>This law subjects violators of the rules of warfare to punishment, and persons “who have ordered or have committed acts of suppression either collective or individual, in accordance with a political or racial plan,” or “the removal and transportation of persons in order to exterminate them,” or “have imposed inhumane treatment upon those who were in their power.” (p. 218).</p> <p><b>COMMENT:</b> “...this law seems to anticipate the [IMT] Charter.” (p. 218).</p>
8.	The Grand Ducal Decree, Luxembourg, 3 July 1945 (as cited by the <i>History of the UN War Crimes Commission</i> )	1945	Unclear	<p>“...to the numerous violations of international law and of the obligations of humanity (des devoirs de l’humanite) which have been committed by the invader...” (preamble) (p. 218).</p> <p><b>COMMENT:</b> “In both the Belgian and Luxembourg statutes the term ‘obligations of humanity’...is hardly used in the technical sense in which the ‘crimes against humanity’ has been adopted in the (subsequent) London Charter to which both Belgium and Luxembourg eventually adhered.” (p. 218).</p>

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9.	Austrian Constitutional Law, 26 July 1945 (as cited by the <i>History of the UN War Crimes Commission</i> )	1945	Yes	“Any person who, in the course of this war, acting in the real or assumed interest of the German armed forces or of the National Socialist tyranny, has committed or instigated an act repugnant to the natural principles of humanity against any persons, whether in connection with warlike or military actions or the actions of militarily organised groups, shall be considered guilty of the same crime.” (p. 218).
10.	Charter of the International Military Tribunal, 8 August 1945	1945	Yes	<p>Article 6(c): Crimes against Humanity “namely murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.”</p> <p><b>COMMENT:</b> It is not ambiguous as to whether the nexus requirement contained in the Nuremberg Charter was a jurisdictional limitation unique to the Charter; the IMT Judges were explicit in stating that the Charter represented international law existing at the time of its creation. (IENG Sary Appeal Against the Armed Conflict Nexus Decision, paras. 27-28).</p>
11.	Control Council Law No. 10, 20 December 1945	1945	Unclear	Article 1: “The Moscow Declaration of 30 October 1943 ‘Concerning Responsibility of Hitlerites for Committed

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				<p>Atrocities’ and the London Agreement of 8 August 1945 [IMT Charter] ‘Concerning Prosecution and Punishment of Major War Criminals of European Axis’ are made integral parts of this Law.”</p> <p>Article II(c): Crimes against Humanity: “Atrocities and offenses, including but not limited to murder, extermination, enslavement, deportation, imprisonment, torture, rape, or other inhumane acts committed against any civilian population, or persecutions on political, racial or religious grounds whether or not in violation of the domestic laws of the country where perpetrated.”</p>
12.	Retribution Decree of Czechoslovakia, 19 June 1945 (as cited by the <i>History of the UN War Crimes Commission</i> )	1945	Unclear	<p>This Decree “contains ... provisions relating to membership in criminal organisations (Sections 2 and 3(2), deportations for forced labour (Section 6), unjustified imprisonment (Section 7) and also refers to ‘national, political or racial persecution’ (Section 10).” (p. 217).</p> <p><b>COMMENT:</b> “What, in the London Charter, are called war crimes and crimes against humanity are treated as violations of the pre-1938 provisions of municipal penal law in the Retribution Decree of Czechoslovakia.” (p. 217).</p>
13.	Regulations of the Military Commissions in the Far Eastern and China Theatres of War, 5	1945	Yes	<p>Crimes against humanity is defined as: “Murder, extermination, enslavement, deportation and other inhumane acts, committed against any civilian</p>

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	December 1945 (as cited by the <i>History of the UN War Crimes Commission</i> )			population before or during the war, or persecutions on political, racial or religious grounds, in execution of, or in connection with, any crime defined herein, whether or not in violation of the domestic laws of the country where perpetrated.” (p. 215).
14.	The International Military Tribunal for the Far East (IMTFE) Charter, 19 January 1946	1946	Yes	Article 5(c): “Namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political or racial grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.”
15.	Extradition and Punishment of War Criminals, U.N.G.A. Res. 3(I), 13 February 1946	1946	Yes	“...taking note of the laws and usages of warfare established by the fourth Hague Convention of 1907; taking note of the definition of war crimes and crimes against peace and against humanity contained in the [IMT Charter] dated 8 August 1945; believing that certain war criminals continue to evade justice in the territories of certain States; <i>recommends</i> that Members of the [UN] ... cause the arrest of those war criminals ... and to cause them to be sent back to the countries in which their abominable deeds were done...” (p. 10).
16.	Danish Act, 12 July 1946 (as cited by the <i>History of the UN War Crimes Commission</i> )	1946	Yes	“In addition to the instances cited in paragraph I, persons having committed the following crimes shall be liable to prosecution under this Act: war crimes or crimes against



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				<p>humanity such as murder, ill-treatment of civilians, prisoners or seamen, the killing of hostages, looting of public or private property, requisitioning of money or other valuables, violation of the Constitution, imposition of collective punishments, destruction by explosives or otherwise, in so far as such actions were performed in violation of the rules of international law governing Occupation and War. This Act shall further apply ... to all action which, though not specifically cited above, are covered by Article 6 of the Charter of the International Military Tribunal.” (p. 219).</p> <p><b>COMMENT:</b> Article 6 of the London Charter “is expressly embodied in Danish domestic law.” (p. 219).</p>
17.	Affirmation of the Principles of International Law Recognized by the Charter of the Nürnberg Tribunal, U.N.G.A. Res. 95(I), 11 December 1946	1946	Yes	<p>“<i>The General Assembly ... Affirms</i> the principles of international law recognized by the Charter of the Nürnberg Tribunal and the judgment of the Tribunal; <i>Directs</i> the Committee on the codification of international law established by the resolution of the General Assembly of 11 December 1946 ... to treat as a matter of primary importance plans for the formulation, in the context of a general codification of offences against the peace and security of mankind, or of an International Criminal Code, of the principles recognized in the Charter of the Nürnberg Tribunal and in the judgment of the Tribunal.”</p>

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18.	1948 Genocide Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948, 78 UNTS 277	1948	No	<p>Article 1: “The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.”</p> <p><b>COMMENT:</b> The Genocide Convention does not demonstrate state practice regarding the armed conflict nexus. Genocide and crimes against humanity are legally distinct crimes: <b>a.</b> each has a distinct <i>mens rea</i>; and <b>b.</b> unlike crimes against humanity, the definition of genocide does not require that the acts occur as a part of a widespread or systematic attack. Additionally, the removal of the nexus requirement from the definition of genocide did not impact the definition of crimes against humanity. (IENG Sary Appeal Against the Armed Conflict Nexus Decision, paras. 42-43).</p>
19.	The 1950 Nazi and Nazi Collaborators (Punishment) Law (Israel)	1950	No	<p>Article 1: “‘crime against humanity’ means any of the following acts: murder, extermination, enslavement, starvation or deportation and other inhumane acts committed against any civilian population, and persecution on national, racial, religious or political grounds.”</p>
20.	Summary Record of 48 <sup>th</sup> Meeting of the International Law Commission, (Topic: Formulation of the Nürnberg Principles),	1950	Yes	<p>“The CHAIRMAN said that article 6(c) of the Nürnberg Tribunal included crimes committed ‘before or during the war’. He thought that the Rapporteur had in fact interpreted this working in a restrictive sense, and that</p>

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	A/CN.4/SR.48, 16 June 1950			<p>the Commission had a right to examine this interpretation. He suggested deleting the words ‘when such acts are done or such persecutions are carried on in execution of or in connection with any crime against peace or any war crime.’” (para. 90).</p> <p>“Mr. SPIROPOULOS opposed this suggestion [to delete the armed conflict nexus]. The judgment had interpreted the Charter, and the Commission must abide by the judgment.” (para. 91).</p> <p>“Mr. AMADO...favoured the text [armed conflict nexus] as it stood in the report.” (para. 94).</p> <p>Mr. HUDSON argued that “[t]he connexion with war must be kept.” (para. 95).</p> <p>Mr. ALFARO argued that “the end of the paragraph [the armed conflict nexus] was necessary to make them crimes under international law.” (para. 103).</p> <p>“Mr. BRIERLY thought that crimes ... could be committed even where there was no war. A crime against humanity was a crime even in the absence of war.” (para. 117).</p> <p>“The CHAIRMAN thought the time had come to take a decision, and he asked the Commission whether it wished to keep the text of paragraph (c) as it stood in the report.”</p>

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				(para. 126).  <i>“It was decided to keep the text.”</i> (p. 58).
21.	Principles of International Law Recognized in the Charter of the Nürnberg Tribunal and in the Judgement of the Tribunal, A/1316, 1950	1950	Yes	<p>Principle VI(c): Crimes Against Humanity “Murder, extermination, enslavement, deportation and other inhuman acts done against any civilian population, or persecutions on political, racial or religious grounds, when such acts are done or such persecutions are carried on in execution of or in connection with any crime against peace or any war crime.”</p> <p><b>COMMENT:</b> The Trial Chamber did not consider the Nuremberg Principles as a material statement of customary international law, which codified principles of customary international of the time. Further, the UN General Assembly affirmed these principles. (IENG Sary Appeal Against the Armed Conflict Nexus Decision, paras. 37-38).</p>
22.	Summary Record of 90 <sup>th</sup> Meeting of the International Law Commission, (Topic: Draft code of offences against the peace and security of mankind, Part I), A/CN.4/SR.90, 28 May 1951	1951	Unclear	“Mr. SPIROPOULOS recalled that the previous session the Commission had considered that the acts referred to in paragraph 9 were crimes under international law only if they were connected with war crimes or crimes against peace. In the Sixth Committee, the French delegation had criticized that view as being too narrow. It had considered that there could be a crime against mankind in time of peace just as well as in time of war. If he

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				remembered rightly, no other delegate supported that view.” (paras. 138-39).
23.	Second Report on a Draft Code of Offences Against the Peace and Security of Mankind by Mr. J. Spiropoulos, Special Rapporteur, (Topic: Draft code of offences against the peace and security of mankind, Part I), A/CN.4/44, 1951	1951	Yes	<p>Views concerning the Nürnberg Principles, principle VI(c), (starting at para. 116):</p> <p>AMADO: “[W]ished, however, to draw the Committee’s attention to paragraph 120 of the report, which dealt with crimes against humanity. Those acts constituted international crimes only when committed in connexion with other crimes falling within the category of crimes against peace and war crimes.” (para. 116).</p> <p>“CHAUMONT...[i]n principle VI, the Commission had retained the idea embodied in the Nürnberg charter crimes against humanity were linked with crimes against peace and war crimes.” (para. 118).</p>
24.	1954 International Law Commission’s Draft Code of Offences Against the Peace and Security of Mankind, UN Doc. A/2693, 1954	1954	No	<p>Article 1: “Offences against the peace and security of mankind, as defined in this Code, are crimes under international law, for which the responsible individuals shall be punished.”</p> <p><b>COMMENT:</b> The 1954 ILC Draft Code of Offences was never adopted by the UN General Assembly. Yet, even if this document is considered evidence of the view of experts in international criminal law from interested states, the debate among State delegates indicates that in 1954 the</p>

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				status of the armed conflict nexus was not settled. (IENG Sary Appeal, para. 41).
25.	<b>YEARS: 1955 - 1967</b>			
	No significant developments in relation to the armed conflict nexus in the definition of crimes against humanity in international instruments or national legislation to the best of the Defence's knowledge.			
	<b>YEARS: 1968 - 1984</b>			
	1968 Statute of Limitations Convention, U.N.G.A. Res. 2391 (XXIII), 26 November 1968	1968	No	<p>Article I(b): Crimes against humanity whether committed in time of war or in time of peace as they are defined in the Charter of the International Military Tribunal, Nürnberg, of 8 August 1945 are confirmed by resolutions 3 (I) of 13 February 1946 and 95 (I) of 11 December 1946 of the General Assembly of the United Nations..."</p> <p><b>COMMENT:</b> The 1968 Statute of Limitations Convention clearly did not have significant State support. It was "fundamentally a political document" that gained support from less than half of the 126 United Nations Member States when it was adopted. (IENG Sary Appeal Against the Armed Conflict Nexus Decision, para. 47).</p>

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26.	1973 International Convention on the Suppression and Punishment of the Crime of Apartheid, U.N.G.A. Res. 3068(XXVII), 30 November 1973	1973	No	<p>Article 1: “The State Parties to the present Convention declare that <i>apartheid</i> is a crime against humanity and that inhuman acts resulting from the policies and practices of <i>apartheid</i> and similar policies and practices of racial segregation and discrimination, as defined in article II of the Convention, are crimes violating the principles of international law, in particular the purposes and principles of the Charter of the United Nations, and constituting a serious threat to international peace and security.”</p> <p><b>COMMENT:</b> When the Apartheid Convention entered into force on 18 July 1976, no Western countries had signed it, indicating a lack of uniform State practice and <i>opinio juris</i>. (IENG Sary Appeal Against the Armed Conflict Nexus Decision, para. 50).</p>
27.	The European Convention on the Non-Applicability of Statutory Limitation to Crimes Against Humanity and War Crimes, 25 January 1974	1974	No	<p>Article 1: “Each Contracting State undertakes to adopt any necessary measures to secure that statutory limitation shall not apply to the prosecution of the following offences, or to the enforcement of the sentences imposed for such offences, in so far as they are punishable under its domestic law:</p> <p>1. the crimes against humanity specified in the Convention on the Prevention and Punishment of the Crime of Genocide adopted on 9 December 1948 by the General Assembly of the United Nations.”</p>

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28.	<b>YEARS: 1985 - 1998</b>			
	Report of the Secretary-General Pursuant to Paragraph 2 of Security Council Resolution 808, UN Doc. S/25704, 3 May 1993	1993	Yes	<p>“The part of conventional international humanitarian law which has beyond doubt become part of international customary law is the law applicable in armed conflict as embodied in: the Geneva Conventions of 12 August 1949 for the Protection of War Victims; ... the Hague Convention (IV) Respecting the Laws and Customs of War on Land and the Regulations annexed thereto of 18 October 1907; ... the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948; ... and the [IMT Charter] of 8 August 1945.” (para. 35).</p> <p><b>COMMENT:</b> Post-1979 developments in customary international law are not material as to the status of the armed conflict nexus from 1975-1979. (IENG Sary Appeal Against the Armed Conflict Nexus Decision, para. 51).</p>
29.	Statute of the International Criminal Tribunal for the Former Yugoslavia, UN Res. 827, adopted 25 May 1993	1993	Yes	<p>Article 5: Crimes Against Humanity</p> <p>“The International Tribunal shall have the power to prosecute persons responsible for the following crimes when committed in armed conflict, whether international or internal in character, and directed against any civilian population...”</p> <p><b>COMMENT:</b> The ICTY Statute includes a nexus, and drafting history</p>



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				shows that the drafters considered the armed conflict nexus in crimes against humanity as part of customary international law. While ICTY jurisprudence has held that the nexus requirement is a jurisdictional limitation specific to the ICTY, ICTY judges have adopted a more expansive approach to interpretation. (IENG Sary Appeal Against the Armed Conflict Nexus Decision, para. 52-53).
30.	Statute of the International Criminal Tribunal for Rwanda, UN Doc. S/RES/955, 1994	1994	No	<p>Article 3: Crimes against Humanity</p> <p>“The International Tribunal for Rwanda shall have the power to prosecute persons responsible for the following crimes when committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds...”</p> <p><b>COMMENT:</b> Professor Schabas has argued that the UN Secretary-General considered the ICTR Statute to be a “departure from customary international law.” (see IENG Sary Appeal Against the Armed Conflict Nexus Decision, para. 54).</p>
31.	Report of the Secretary-General Pursuant to Paragraph 5 of Security Council Resolution 955, UN Doc. S/1995/134, 1994	1995	Unclear	“...the Security Council has elected to take a more expansive approach to the choice of the applicable law than the one underlying the statute of the Yugoslav Tribunal, and included within the subject-matter jurisdiction of the Rwanda Tribunal international instruments regardless of whether they were considered

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				part of customary international law or whether they have customarily entailed the individual criminal responsibility of the perpetrator of the crime. Article 4 of the statute, accordingly, includes violations of Additional Protocol II, which, as a whole, has not yet been universally recognized as part of customary international law, and for the time criminalizes common article 3 of the four Geneva Conventions.” (para. 12).
32.	Report of the Preparatory Committee on the Establishment of an International Criminal Court, Vol. 1, (Proceedings of the Preparatory Committee during March-April and August 1996), Doc. A/51/22	1996	Unclear	<p>“<u>Nexus to armed conflict</u> There were different views as to whether it was necessary to include a nexus to an armed conflict which was not included in the Rwanda Tribunal Statute. Some delegations expressed the view that crimes against humanity were invariably committed in situations involving some type of armed conflict, as indicated by the ad hoc tribunals; that existing law required some type of connection to an armed conflict in a broad sense, with references being made to the Nürnberg Charter, the Yugoslavia Tribunal Statute, the memorandum of its President and the <u>Nikolić</u> case pending before it; and that customary law had not changed owing to the adoption of human rights instruments which provided specific procedures for addressing violations or the Rwanda Tribunal Statute.” (para. 88).</p> <p>“However, several delegations expressed the view that crimes against humanity could occur in time of armed conflict or in time of peace and that the armed conflict</p>

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				<p>nexus that appeared in the Nürnberg Tribunal Charter was no longer required under existing law, with attention being drawn to article I of the Genocide Convention, Control Council Law Number 10, the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, the Rwanda Tribunal Statute, the Yugoslavia Tribunal Appeals Chamber decision in the <u>Tadić</u> case and the draft Code. The view was also expressed that although crimes against humanity often occurred in situations involving armed conflict, these crimes could also occur in time of peace or in situations that were ambiguous.” (para. 89).</p> <p>“The view was expressed that peacetime offences might require an additional international dimension or criterion to indicate the crimes that would be appropriate for adjudication by the Court, possibly by limiting the individuals who could commit such crimes. Some delegations questioned the need for an additional criterion assuming that sufficiently serious, grave or inhumane acts were committed on a widespread and systematic basis, with attention being drawn to proposals for clarifying this general criterion to indicate more clearly the offences that would be appropriate for international adjudication.” (para. 90).</p> <p><b>COMMENT:</b>  “Debate continued on [the] subject [of the armed conflict nexus] in the sessions of the Preparatory Committee.”</p>

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				(WILLIAM A. SCHABAS, THE INTERNATIONAL CRIMINAL COURT: A COMMENTARY ON THE ROME STATUTE 146 (2010)).
33.	Preparatory Committee Draft Statute for the International Criminal Court, Report of the Preparatory Committee on the Establishment of an International Criminal Court, A/CONF.183/2/Add.1, 14 April 1998	1998	Unclear	<p><u>Crimes against Humanity</u></p> <p>1. “For the purpose of the present Statute, a crime against humanity means any of the following acts when committed:</p> <p>[as part of a widespread [and] [or] systematic attack against any [civilian] population] [committed on a massive scale] [in armed conflict] [on political, philosophical, racial, ethnic or religious grounds or any other arbitrarily defined grounds] ...” (p. 25-26).</p> <p><b>COMMENT:</b></p> <p>“[T]he ... options [for the definition of crimes against humanity, including an armed conflict nexus alternative] appeared in the final consolidated text that served as a foundation for deliberations in July 1998 in Rome. In contrast to the crime of genocide, a consensus definition of crimes against humanity eluded drafters until the final days of the Diplomatic Conference. China, India, the Russian Federation and a number of states from the Middle East continued to support the retention of the war nexus requirement ...” (Beth Van Schaack, <i>The Definition of Crimes Against Humanity: Resolving the Incoherence</i>, 37 COLUM. J. OF TRANSNAT’L L. 787, 844 (1999)).</p>

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34.	“United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court,” 3 <sup>rd</sup> Meeting of the Committee of the Whole, UN Doc. A/CONF.183/C.1/SR.3, 17 June 1998	1998	Unclear	“ <b>The Chairman</b> , summing up the discussion, said that ... [t]here was a difference of opinion as to whether there should be a nexus between crimes against humanity and armed conflict, and some delegations also wished to limit ‘armed conflict’ to international armed conflict.” (paras. 174, 176).
35.	Rome Statute of the International Criminal Court, circulated as A/CONF.183/9, 17 July 1998	1998	No	<p>Article 7(1): “For the purposes of this Statute, ‘crimes against humanity’ means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack...”</p> <p><b>COMMENT:</b> The Trial Chamber cited the negotiations of the ICC Statute as showing ‘beyond doubt’ that by 1998 crimes against humanity no longer required a nexus with armed conflict. However, the debates leading up to the adoption of the ICC Statute indicate that the armed conflict nexus question was not settled prior to the adoption of the ICC Statute. (IENG Sary Appeal Against the Armed Conflict Nexus Decision, para. 55).</p>
36.	<b>YEARS: 1999-2011</b>			
	Report of the Group of Experts for Cambodia established pursuant to	1999	No	“The bond between crimes against humanity and armed conflict appear to have been severed by 1975.” (para.

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	General Assembly Resolution 52/135, 18 February 1999			71).  <b>COMMENT:</b> This Report does not provide conclusive evidence of customary international law from 1975-1979. The Report only cites two sources, one of which was written by one of the members of the Group of Experts. (IENG Sary Appeal Against the Armed Conflict Nexus Decision, para. 36, n. 76).
37.	Statute of the Special Court for Sierra Leone, U.N.S.C. Res. 1315, 14 August 2000	2000	No	Article 2: “The Special Court shall have the power to prosecute persons who committed the following crimes as part of a widespread or systematic attack against any civilian population ...”
38.	Law on the Establishment of the Extraordinary Chambers, with inclusion of amendments, as promulgated on 27 October 2004	2004	No	“Crimes against humanity, which have no statute of limitations, are any acts committed as part of a widespread or systematic attack directed against any civilian population, on national, political, ethnical, racial or religious grounds, such as...”