

# **International Criminal Law**

*Carolina Academic Press  
Law Advisory Board*



Gary J. Simson, Chairman  
*Dean, Mercer University School of Law*

Raj Bhala  
*University of Kansas School of Law*

Davison M. Douglas  
*Dean, William and Mary Law School*

Paul Finkelman  
*Albany Law School*

Robert M. Jarvis  
*Shepard Broad Law Center  
Nova Southeastern University*

Vincent R. Johnson  
*St. Mary's University School of Law*

Peter Nicolas  
*University of Washington School of Law*

Michael A. Olivas  
*University of Houston Law Center*

Kenneth L. Port  
*William Mitchell College of Law*

H. Jefferson Powell  
*The George Washington University Law School*

Michael P. Scharf  
*Case Western Reserve University School of Law*

Peter M. Shane  
*Michael E. Moritz College of Law  
The Ohio State University*

# International Criminal Law

---

## Cases and Materials

### Fourth Edition

**Jordan J. Paust**

UNIVERSITY OF HOUSTON  
LAW CENTER

**M. Cherif Bassiouni**

DEPAUL UNIVERSITY COLLEGE OF LAW

**Michael Scharf**

CASE WESTERN RESERVE  
SCHOOL OF LAW

**Leila Sadat**

WASHINGTON-ST. LOUIS  
SCHOOL OF LAW

**Jimmy Gurulé**

NOTRE DAME LAW SCHOOL

**Bruce Zagaris**

OF THE D.C. BAR

CAROLINA ACADEMIC PRESS

Durham, North Carolina

Copyright © 2013  
Jordan J. Paust, M. Cherif Bassiouni, Michael Scharf,  
Leila Sadat, Jimmy Gurulé, and Bruce Zagaris  
All Rights Reserved

ISBN: 978-1-59460-905-3  
LCCN: 2012948790

Carolina Academic Press  
700 Kent Street  
Durham, North Carolina 27701  
Telephone (919) 489-7486  
Fax (919) 493-5668  
[www.cap-press.com](http://www.cap-press.com)

Printed in the United States of America

# Summary Table of Contents

---

Preface	xxi
Acknowledgments	xxiii

## PART ONE • GENERAL NATURE, RESPONSIBILITIES, AND STATE COMPETENCIES TO ENFORCE

<b>Chapter 1 • General Nature of International Criminal Law</b>	<b>5</b>
Section 1 General Nature and Sources of ICL	5
A. Penal Aspects of International Law: International Crimes	6
B. International Aspects of National Criminal Law: Enforcement	22
Section 2 Distinctions between International and Transnational Crimes	25
<b>Chapter 2 • Individual, State and Other Responsibilities</b>	<b>39</b>
Section 1 Individual Responsibility	39
A. Private Individuals, Officials, and Heads of State	39
1. An Introduction to General Types of Responsibility	39
2. Responsibility and Domestic Immunities of Officials and Heads of State	46
B. Membership in Organizations and Groups	65
C. Complicity	69
D. Conspiracy	75
E. Joint Criminal Enterprise Responsibility	80
1. Trends in Decision	81
2. The Cambodia Decision in 2010	85
F. Leader Responsibility	91
Section 2 Other General Defenses or Grounds for Excluding Responsibility	122
A. Viable Defenses	122
1. Superior Orders	122
2. Duress	135
3. Self-Defense and Defense of Others	155
4. Mistake of Fact	156
B. Defenses Not Accepted	157
1. Propriety under Domestic Law	157
2. Tu Quoque	158
3. Double Jeopardy Between Different Sovereigns	159
4. Official Status or Immunity	160
Section 3 State Responsibility	160

<b>Chapter 3 • State Competencies</b>	<b>179</b>
Section 1 Universal Jurisdiction	179
Section 2 Other Bases of Jurisdiction	196

**PART TWO • INCORPORATION AND ENFORCEMENT**

<b>Chapter 4 • U.S. Incorporation, Competencies and Fora</b>	<b>247</b>
Section 1 The United States Constitution (extracts)	247
Section 2 Early U.S. Cases and Opinions	249
Section 3 Incorporation by Reference	262
Section 4 New Statutes and New Fora	265
Section 5 Prosecuting Without a Statute	269
A. Custom	269
B. Treaties	271
Section 6 Federal District Court Jurisdiction	273
Section 7 Military Commissions and Courts-Martial	283
A. Military Commissions	283
B. Post WWII Executive Recognitions	288
C. Courts-Martial	325
D. Regular Uses of Such Fora and State Courts	334
Section 8 U.S. Occupation Courts	343
<b>Chapter 5 • Obtaining Persons Abroad</b>	<b>365</b>
Section 1 Extradition	365
A. The Process	366
B. Standing and the “Speciality” Doctrine	374
C. Grounds for Denial of Extradition	381
D. The Political Offense Exception and Non-Inquiry	404
1. The Political Offense Exception	405
2. Non-Inquiry	424
Section 2 Rendition	438
A. By International Agreement	438
1. Commonwealth Countries	438
2. Others	441
B. Deportation as Disguised Extradition	442
Section 3 Luring (Trickery)	447
A. The United States Position on Luring: <i>Yunis</i> and <i>Mala Captus Bene Detentus</i>	447
B. International Consensus Against the Practice of Luring	453
1. State Viewpoints	453
2. Jurisprudence of the ICTY: The <i>Dokmanovic</i> Case	456
Section 4 Abductions	458
A. Unconsented to Extraterritorial Abductions Under International Law	459
B. Judicial Responses to Extraterritorial Abductions	463
Section 5 Other Uses of Force	484
A. Capture During War or in Self-Defense	484
B. U.N. Security Council Powers	485

<b>Chapter 6 • International Prosecutorial Efforts and Tribunals</b>	<b>487</b>
Section 1 Early Experience	487
Section 2 Efforts During World War I Era	488
Section 3 International Tribunals After World War II	490
A. The International Military Tribunal at Nuremberg	490
1. Opinion and Judgment as to Jurisdiction (October 1, 1946)	490
2. Individual Responsibility	491
3. Decision of the International Military Tribunal at Nuremberg	491
B. The International Military Tribunal for the Far East	496
C. Allied Control Council Law No. 10	498
Section 4 Efforts of the United Nations Command in Korea and Procedural Guarantees	501
Section 5 Human Rights to Due Process	505
Section 6 Efforts After the Independence of Bangladesh	510
Section 7 The Iraqi High Tribunal	517
Section 8 The Special Court for Sierra Leone: A Hybrid Model	522
Section 9 The Ad Hoc International Criminal Tribunals for Former Yugoslavia and Rwanda	525
A. ICT for Former Yugoslavia	525
B. ICT for Rwanda	568
Section 10 The Statute of the International Criminal Court	577

### PART THREE • OFFENSES

<b>Chapter 7 • Offenses Against Peace</b>	<b>591</b>
Section 1 Violations of Neutrality	592
A. General Offenses	592
B. Mercenarism	604
Section 2 Aggressive War and Force	607
A. Early Recognitions	607
B. World War I	607
C. World War II	618
D. Post World War II	630
Section 3 Aggression Against Authority	667
<b>Chapter 8 • War Crimes</b>	<b>673</b>
Sources of International Humanitarian Law	675
Section 1 Applicability	677
Section 2 Types of War Crimes	699
A. General	699
B. Conduct of Hostilities and Other Protections	713
<b>Chapter 9 • Crimes Against Humanity</b>	<b>741</b>
Section 1 Nuremberg and Earlier	742
Section 2 Eichmann Trial (Israel)	754
Section 3 Barbie, Touvier and Papon Trials (France)	759
Section 4 Mugesera Case (Canada)	773
Section 5 Newer International Prosecutions	777

A. The International Criminal Tribunals for the Former Yugoslavia and Rwanda and the Special Court for Sierra Leone	777
B. The Rome Statute for the International Criminal Court and its Application	800
<b>Chapter 10 • Genocide</b>	<b>815</b>
Section 1 The Convention	815
A. Prosecutions Before the International Criminal Tribunal for Rwanda	819
B. Prosecutions Before the International Criminal Tribunal for Former Yugoslavia	833
Section 2 Application in Bangladesh	836
Section 3 Genocide and Politicide	838
Section 4 U.S. Implementation	843
<b>Chapter 11 • Human Rights</b>	<b>855</b>
Section 1 General Human Rights	855
A. The United Nations Charter	855
B. The International Covenant on Civil and Political Rights	856
C. The American Declaration and O.A.S. Charter	858
Section 2 Torture and Other Inhumane Acts	859
Section 3 Race Discrimination	868
A. General Discrimination	868
B. Apartheid	869
Section 4 Hostage-Taking	869
Section 5 Disappearances	870
<b>Chapter 12 • Terrorism</b>	<b>873</b>
Section 1 The Problem of Definition	873
Section 2 The Multilateral Legal Framework	892
A. U.N. Terrorism Resolutions	892
B. The Anti-Terrorism Conventions	894
Section 3 Domestic Legislation	905
Table of Cases	
(A Table of Cases will be available online through <a href="http://www.cap-press.com">www.cap-press.com</a> )	
Index	913



# Table of Contents

---

Preface	xxi
Acknowledgments and Permissions	xxiii

## PART ONE • GENERAL NATURE, RESPONSIBILITIES, AND STATE COMPETENCIES TO ENFORCE

<b>Chapter 1 • General Nature of International Criminal Law</b>	<b>5</b>
Section 1 General Nature and Sources of ICL	5
A. Penal Aspects of International Law: International Crimes	6
Jordan J. Paust, <i>Customary International Law: Its Nature, Sources and Status as Law of the United States</i>	8
<i>Filartiga v. Pena-Irala</i>	10
B. International Aspects of National Criminal Law: Enforcement	22
Section 2 Distinctions between International and Transnational Crimes	25
Role-Playing Problem Concerning an Amnesty Agreement	26
Leila Nadya Sadat, <i>Exile, Amnesty, and International Law</i>	27
Michael P. Scharf, <i>From the eXile Files: An Essay on Trading Justice for Peace</i>	31
<b>Chapter 2 • Individual, State and Other Responsibilities</b>	<b>39</b>
Section 1 Individual Responsibility	39
A. Private Individuals, Officials, and Heads of State	39
1. An Introduction to General Types of Responsibility	39
<i>Opinion and Judgment of the International Military Tribunal at Nuremberg</i>	39
<i>Principles of the Nuremberg Charter and Judgment Report of the Secretary-General Pursuant to Paragraph 2 of Security Council Resolution 808</i>	40
<i>The Prosecutor v. Blagojevic &amp; Jokic</i>	42
2. Responsibility and Domestic Immunities of Officials and Heads of State	46
<i>Regina v. Bartle and the Commissioner of Police for the Metropolis and Others, Ex Parte Pinochet</i>	47
Jordan J. Paust, <i>Genocide in Rwanda, State Responsibility to Prosecute or Extradite, and Nonimmunity for Heads of State and Other Public Officials</i>	51

<i>Case Concerning the Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium), International Court of Justice</i>	54
B. Membership in Organizations and Groups	65
Telford Taylor, <i>Final Report to the Secretary of the Army on the Nuernberg War Crimes Trials under Control Council Law No. 10</i>	66
C. Complicity	69
Paust, <i>My Lai and Vietnam</i> . . .	69
D. Conspiracy	75
<i>The Prosecutor v. Karemera and Ngirumpatse</i>	75
E. Joint Criminal Enterprise Responsibility	80
1. Trends in Decision	81
<i>The Prosecutor v. Blagojevic &amp; Jokic</i>	81
2. The Cambodia Decision in 2010	85
<i>In the name of the Cambodian people and the United Nations and pursuant to the Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea</i>	85
F. Leader Responsibility	91
<i>Judgment of the International Military Tribunal for the Far East (1948)</i>	91
Paust, <i>My Lai and Vietnam</i> . . .	93
<i>The Prosecutor v. Delalic, et al.</i>	99
<i>The Prosecutor v. Zlatko Aleksovski</i>	109
Revised from: J. Paust, <i>Threats to Accountability After Nuremberg: Crimes Against Humanity, Leader Responsibility and National Fora</i>	119
Section 2 Other General Defenses or Grounds for Excluding Responsibility	122
A. Viable Defenses	122
1. Superior Orders	122
In re <i>Eck and Others (The Peleus)</i>	122
In re <i>Von Leeb and Others</i>	124
In re <i>Ohlendorf and Others (Einsatzgruppen Trial)</i>	125
<i>United States v. Staff Sergeant (E-6) Walter Griffen</i>	128
U.S. Dep't of Army FM 27-10, <i>The Law of Land Warfare</i>	132
Paust, <i>My Lai and Vietnam</i> . . .	132
2. Duress	135
U.S. Dep't of Army, <i>II International Law</i>	135
Paust, <i>My Lai and Vietnam</i> . . .	136
M. C. Bassiouni, <i>A Draft International Criminal Code and Draft Statute for an International Criminal Tribunal</i>	136
<i>Report of the International Law Commission on the work of its forty-sixth session</i>	137
<i>R. v. Imre Finta</i>	138
<i>Prosecutor v. Dražen Erdemović</i>	140
3. Self-Defense and Defense of Others	155
U.S. Dep't of Army, <i>II International Law</i>	155

M. C. Bassiouni, <i>A Draft International Criminal Code and Draft Statute for an International Criminal Tribunal</i>	156
4. Mistake of Fact	156
U.S. Dep't of Army, <i>II International Law</i>	156
B. Defenses Not Accepted	157
1. Propriety under Domestic Law	157
U.S. Dep't of Army, <i>II International Law</i>	157
2. Tu Quoque	158
U.S. Dep't of Army, <i>II International Law</i>	158
J. Pictet, <i>IV Commentary</i>	158
3. Double Jeopardy Between Different Sovereigns	159
4. Official Status or Immunity	160
<i>Control Council Law No. 10</i>	160
Section 3 State Responsibility	160
Jordan J. Paust, <i>Universality and the Responsibility to Enforce International Criminal Law: No U.S. Sanctuary for Alleged Nazi War Criminals</i>	160
<i>Letter dated 24 April 1996 from the President of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 Addressed to the President of the Security Council</i>	162
Paust, <i>My Lai and Vietnam: Norms, Myths and Leader Responsibility</i>	163
Michael P. Scharf, <i>The Amnesty Exception to the Jurisdiction of the International Criminal Court</i>	164
Deborah Scroggins, <i>The U.N. War Crimes Files: A Question of Access</i>	174
<i>1980 Digest of United States Practice in International Law</i>	177
Chapter 3 • State Competencies	179
Section 1 Universal Jurisdiction	179
Introductory Note	179
Paust, <i>Federal Jurisdiction Over Extraterritorial Acts of Terrorism and Nonimmunity for Foreign Violators of International Law Under the FSIA and the Act of State Doctrine</i>	180
<i>Resolution of 1781</i>	181
<i>Demjanjuk v. Petrovsky</i>	183
<i>Restatement of the Foreign Relations Law of the United States</i>	186
<i>United States v. Yunis</i>	189
Paust, <i>Federal Jurisdiction Over Extraterritorial Acts of Terrorism . . .</i>	192
Section 2 Other Bases of Jurisdiction	196
<i>Regina v. Anderson</i>	196
<i>Prescriptive Jurisdiction</i>	197
<i>The Case of the S.S. "LOTUS" (France v. Turkey)</i>	205
<i>United States v. Yunis</i>	216
<i>Joyce v. Director of Public Prosecutions</i>	219

<i>United States v. Georgescu</i>	223
<i>United States v. Noriega</i>	229

## PART TWO • INCORPORATION AND ENFORCEMENT

<b>Chapter 4 • U.S. Incorporation, Competencies and Fora</b>	<b>247</b>
Introductory Problem	247
Section 1 The United States Constitution (extracts)	247
Section 2 Early U.S. Cases and Opinions	249
<i>Nathan v. Commonwealth of Virginia</i>	249
<i>Respublica v. De Longchamps</i>	249
1 Op. Att’y Gen.	250
<i>United States v. Smith</i>	251
<i>Ross v. Rittenhouse</i>	251
11 Op. Att’y Gen.	251
9 Op. Att’y Gen.	252
1 Op. Att’y Gen.	252
<i>Henfield’s Case</i>	254
1 Op. Att’y Gen.	261
1 Op. Att’y Gen.	261
1 Op. Att’y Gen.	261
Section 3 Incorporation by Reference	262
<i>United States v. Smith</i>	262
Ex parte <i>Quirin</i>	264
Section 4 New Statutes and New Fora	265
<i>Attorney General of Israel v. Eichmann</i>	265
<i>Demjanjuk v. Petrovsky</i>	268
Section 5 Prosecuting Without a Statute	269
A. Custom	269
<i>The Three Friends</i>	269
<i>United States v. Hand</i>	269
<i>Talbot v. Janson</i>	270
<i>Morris v. United States</i>	270
14 Op. Att’y Gen.	270
B. Treaties	271
<i>The Over the Top</i>	271
<i>Edwards v. Carter</i>	272
Section 6 Federal District Court Jurisdiction	273
<i>Judicial Courts Act</i>	273
18 U.S.C. § 3231	273
Paust, <i>After My Lai: The Case for War Crime Jurisdiction Over Civilians in Federal District Courts</i>	274
<i>The War Crimes Act</i>	279
Section 7 Military Commissions and Courts-Martial	283
A. Military Commissions	283
In re <i>Yamashita</i>	283
B. Post WWII Executive Recognitions	288
U.S. Dep’t of Army, <i>FM 27-10, The Law of Land Warfare</i>	288

Paust, <i>My Lai and Vietnam: Norms, Myths and Leader Responsibility</i>	288
<i>Hamdan v. Rumsfeld</i>	293
C. Courts-Martial	325
<i>Calley v. Callaway</i>	325
D. Regular Uses of Such Fora and State Courts	334
Paust, <i>My Lai and Vietnam: Norms, Myths and Leader Responsibility</i>	334
Section 8 U.S. Occupation Courts	343
U.S. Dep't of Army, <i>Pamphlet No. 27-161-2</i>	343
<i>United States v. Tiede</i>	349
<b>Chapter 5 • Obtaining Persons Abroad</b>	<b>365</b>
Section 1 Extradition	365
Introductory Problem	365
A. The Process	366
M. Cherif Bassiouni (ed.), <i>2 International Criminal Law</i>	366
<i>18 U.S.C. §§ 3181 et seq.</i>	369
B. Standing and the “Speciality” Doctrine	374
<i>United States v. Puentes</i>	374
<i>R. v. Parisien</i>	376
<i>United States v. Najohn</i>	377
C. Grounds for Denial of Extradition	381
M.C. Bassiouni (ed.), <i>2 International Criminal Law</i>	381
<i>1971 Treaty on Extradition Between the Government of Canada</i>	
<i>and the Government of the United States of America</i>	386
<i>1991 Protocol Amending the Treaty on Extradition</i>	386
<i>Soering Case</i>	390
<i>Kindler v. Canada (Minister of Justice)</i>	400
D. The Political Offense Exception and Non-Inquiry	404
Introductory Problem	404
1. The Political Offense Exception	405
<i>Letter, Secretary of State Marcy to Mr. Hulsemann of Austria</i>	405
<i>Quinn v. Robinson</i>	405
2. Non-Inquiry	424
<i>Ahmed v. Wigen</i>	424
Section 2 Rendition	438
Introduction	438
A. By International Agreement	438
1. Commonwealth Countries	438
<i>R. v. Taylor</i>	439
2. Others	441
B. Deportation as Disguised Extradition	442
<i>Ruiz Massieu v. Reno</i>	442
Section 3 Luring (Trickery)	447
A. The United States Position on Luring: <i>Yunis</i> and <i>Mala Captus</i>	
<i>Bene Detentus</i>	447
<i>United States v. Yunis</i>	447
B. International Consensus Against the Practice of Luring	453
1. State Viewpoints	453

2. Jurisprudence of the ICTY: The <i>Dokmanovic</i> Case	456
Section 4 Abductions	458
Introductory Problem	458
Introduction	459
A. Unconsented to Extraterritorial Abductions Under International Law	459
B. Judicial Responses to Extraterritorial Abductions	463
<i>United States v. Toscanino</i>	463
<i>United States v. Alvarez-Machain</i>	471
<i>United States v. Matta-Ballesteros</i>	479
Section 5 Other Uses of Force	484
A. Capture During War or in Self-Defense	484
B. U.N. Security Council Powers	485
<b>Chapter 6 • International Prosecutorial Efforts and Tribunals</b>	<b>487</b>
Section 1 Early Experience	487
Introductory Note	487
Section 2 Efforts During World War I Era	488
U.S. Department of the Army <i>Pamphlet No. 27-161-2</i>	488
Section 3 International Tribunals After World War II	490
A. The International Military Tribunal at Nuremberg	490
1. Opinion and Judgment as to Jurisdiction (October 1, 1946)	490
2. Individual Responsibility	491
3. Decision of the International Military Tribunal at Nuremberg	491
<i>In re Goering and Others</i>	491
B. The International Military Tribunal for the Far East	496
U.S. Dep't of the Army <i>Pamphlet No. 27-161-2</i>	496
C. Allied Control Council Law No. 10	498
<i>In re Ohlendorf and Others (Einsatzgruppen Trial)</i>	500
Section 4 Efforts of the United Nations Command in Korea and Procedural Guarantees	501
Introductory Note	501
Section 5 Human Rights to Due Process	505
<i>Universal Declaration of Human Rights</i>	505
<i>International Covenant on Civil and Political Rights</i>	505
<i>Extract from Report of the Mission of the International     Commission of Jurists, Inquiry into the Israeli Military Court     System in the Occupied West Bank and Gaza</i>	506
Section 6 Efforts After the Independence of Bangladesh	510
Introduction	510
Jordan Paust & Albert Blaustein, <i>War Crimes Jurisdiction and Due     Process: The Bangladesh Experience</i>	510
<i>Bangladesh International Crimes (Tribunals) Act of July 19, 1973</i>	511
Comments of Professors Paust and Blaustein on the International Crimes (Tribunals) Act of 1973	511
Paust & Blaustein, <i>War Crimes Jurisdiction and Due Process:     The Bangladesh Experience</i>	514
Section 7 The Iraqi High Tribunal	517

Michael P. Scharf, <i>Basic Information About the Iraqi High Tribunal</i>	517
Section 8 The Special Court for Sierra Leone: A Hybrid Model	522
Section 9 The Ad Hoc International Criminal Tribunals for Former Yugoslavia and Rwanda	525
A. ICT for Former Yugoslavia	525
<i>Report of the Secretary-General Pursuant to Paragraph 2 of Security Council Resolution 808 (1993)</i>	525
<i>Annex Statute of the International Tribunal</i>	536
<i>Rules of Procedure and Evidence</i>	536
<i>In the Matter of a Proposal for a Formal Request for Deferral to the Competence of the Tribunal Addressed to the Republic of Bosnia and Herzegovina in Respect of Radovan Karadzic, Ratko Mladic and Mico Stanisic</i>	543
<i>The Prosecutor of the Tribunal v. Dusko Tadic</i>	549
B. ICT for Rwanda	568
<i>U.N. S.C. Res. 955 (8 Nov. 1994)</i>	568
<i>The Prosecutor of the Tribunal v. Georges Anderson Nderubumwe Rutaganda</i>	568
<i>The Prosecutor of the Tribunal v. Jean Paul Akayesu</i>	571
<i>The Prosecutor v. Rutaganda</i>	575
Section 10 The Statute of the International Criminal Court	577
Leila Nadya Sadat, <i>The International Criminal Court and the Transformation of International Law: Justice for the New Millennium</i>	580
22 U.S.C. § 262-1	585

### PART THREE • OFFENSES

Chapter 7 • Offenses Against Peace	591
Introductory Note	591
Section 1 Violations of Neutrality	592
A. General Offenses	592
<i>Henfield's Case</i>	592
<i>Commonwealth v. Schaffer</i>	592
<i>1 Ops. Att'y Gen.</i>	592
<i>The Three Friends</i>	592
<i>Talbot v. Janson</i>	592
18 U.S.C. § 25	594
<i>United States v. Smith</i>	594
<i>Dellums v. Smith</i>	599
<i>United States v. Black</i>	603
B. Mercenarism	604
<i>Protocol I Additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts</i>	604
<i>Neutrality and Nonbelligerency — Mercenaries</i>	605
Section 2 Aggressive War and Force	607

A. Early Recognitions	607
<i>1 Ops. Att’y Gen.</i>	607
<i>Trial of Arbuthnot and Armbrister</i>	607
B. World War I	607
Barbara Tuchman, <i>The Guns of August</i>	607
<i>Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties, Report Presented to the Preliminary Peace Conference</i>	609
<i>Treaty of Peace with Germany</i>	614
<i>Treaty of Peace between the Allied and Associated Powers and Austria</i>	615
<i>Treaty Providing for the Renunciation of War as an Instrument of National Policy</i>	617
<i>Convention on Rights and Duties of States</i>	617
C. World War II	618
<i>Opinion and Judgment, International Military Tribunal at Nuremberg</i>	618
<i>United States v. von Leeb (The High Command Case)</i>	626
D. Post World War II	630
<i>Principles of the Nuremberg Charter and Judgment</i>	630
<i>Charter of the United Nations</i>	631
<i>The War in Iraq (2003—2011)</i>	637
<i>The Armed Conflict in Libya</i>	640
M. Cherif Bassiouni & Benjamin B. Ferencz, <i>The Crime Against Peace</i>	641
<i>Resolution on the Definition of Aggression</i>	645
<i>Case Concerning Military and Paramilitary Activities in and against Nicaragua</i>	646
Section 3 Aggression Against Authority	667
Paust, <i>Aggression Against Authority: The Crime of Oppression, Politicide and Other Crimes Against Human Rights</i>	667
<b>Chapter 8 • War Crimes</b>	<b>673</b>
Introductory Note	673
Introductory Problem	674
Indictment of Fawaz Hussein	674
Sources of International Humanitarian Law	675
<i>Opinion and Judgment, IMT at Nuremberg</i>	677
<i>Report of General Taylor</i>	677
<i>Report of the Secretary General</i>	677
Section 1 Applicability	677
U.S. Army Field Manual 27-10, <i>The Law of Land Warfare</i>	677
J. Pictet (ed.), <i>IV Commentary, Geneva Convention Relative to the Protection of Civilian Persons in Time of War</i>	679
Paust & Blaustein, <i>War Crimes Jurisdiction and Due Process: The Bangladesh Experience</i>	681
<i>The Prosecutor of the Tribunal v. Dusko Tadic</i>	683



	<i>Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I)</i>	683
	<i>Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of non-international armed conflicts (Protocol II)</i>	683
	<i>The Geneva Protocols</i>	695
	Other Aspects of Internal Versus International Armed Conflicts	697
Section 2	Types of War Crimes	699
A.	General	699
	<i>U.S. Dep't of Army Field Manual 27-10, The Law of Land Warfare</i>	699
	<i>The Prosecutor v. Dusko Tadic</i>	703
B.	Conduct of Hostilities and Other Protections	713
	<i>U.S. Dep't of Army FM 27-10, The Law of Land Warfare</i>	713
	<i>The Declaration of St. Petersburg</i>	715
	<i>Hague Declaration No. IV</i>	715
	<i>Geneva Protocol of 1925 (Protocol prohibiting the use in War of Asphyxiating, Poisonous or other Gases, and of Bacteriological Methods of Warfare)</i>	715
	<i>Hague Convention (No. IV) Respecting the Laws and Customs of War</i>	715
	<i>The Dreierwalde Case Trial of Karl Amberger (Formerly Oberfeldwebel), Case No. 7</i>	723
	<i>United States v. von Leeb, et al.</i>	724
	<i>United States v. List, et al.</i>	726
	<i>Instructions for the Government of Armies of the United States in the Field</i>	731
	<i>Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949</i>	731
	<i>Geneva Convention Relative to the Treatment of Prisoners of War, 12 August 1949</i>	731
Chapter 9	• Crimes Against Humanity	741
	Fictional Introductory Problem	741
	<i>Burundi v. Bagosora</i>	741
Section 1	Nuremberg and Earlier	742
	<i>The Prosecutor v. Akayesu</i>	743
	<i>Report of Justice Robert H. Jackson to the President of the United States</i>	744
	<i>International Military Tribunal at Nuremberg, Indictment Number 1</i>	745
	<i>Judgment of the International Military Tribunal at Nuremberg</i>	747
	<i>Control Council Law No. 10</i>	748
	<i>Telford Taylor, Final Report to the Secretary of the Army on the Nuernberg War Crimes Trials Under Control Council Law No. 10</i>	748
	<i>United States v. Altstoetter, et al.</i>	750
Section 2	Eichmann Trial (Israel)	754

	<i>The Attorney General of the Government of Israel v. Adolf, the Son of Karl Adolf Eichmann</i>	754
	<i>Attorney General of Israel v. Eichmann</i>	755
Section 3	Barbie, Touvier and Papon Trials (France)	759
	<i>Matter of Barbie</i>	759
	<i>Matter of Touvier</i>	766
	Leila Sadat Wexler, <i>The Interpretation of the Nuremberg Principles by the French Court of Cassation: From Touvier to Barbie and Back Again</i>	766
	<i>New French Criminal Code</i>	771
Section 4	Mugesera Case (Canada)	773
	<i>Mugesera v. Canada</i>	773
Section 5	Newer International Prosecutions	777
A.	The International Criminal Tribunals for the Former Yugoslavia and Rwanda and the Special Court for Sierra Leone	777
	J. Paust, <i>Threats to Accountability After Nuremberg: Crimes Against Humanity, Leader Responsibility and National Fora</i>	777
	<i>The Prosecutor v. Rutaganda</i>	782
	<i>The Prosecutor v. Musema</i>	785
	<i>The Prosecutor v. Dusko Tadic</i>	790
B.	The Rome Statute for the International Criminal Court and its Application	800
	Leila Nadya Sadat, <i>The International Criminal Court and the Transformation of International Law: Justice for the New Millennium</i>	800
	<i>Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya</i>	803
<b>Chapter 10 • Genocide</b>		<b>815</b>
Section 1	The Convention	815
	<i>Convention on the Prevention and Punishment of the Crime of Genocide</i>	815
A.	Prosecutions Before the International Criminal Tribunal for Rwanda	819
	<i>The Prosecutor v. Jean-Paul Akayesu</i>	819
	<i>The Prosecutor v. Rutaganda</i>	827
	<i>The Prosecutor v. Musema</i>	829
B.	Prosecutions Before the International Criminal Tribunal for Former Yugoslavia	833
Section 2	Application in Bangladesh	836
	Paust & Blaustein, <i>War Crimes Jurisdiction and Due Process: The Bangladesh Experience</i>	836
Section 3	Genocide and Politicide	838
	Paust, <i>Aggression Against Authority: The Crime of Oppression, Politicide and Other Crimes Against Human Rights</i>	838
	Hurst Hannum, <i>International Law and Cambodian Genocide: The Sounds of Silence</i>	839
Section 4	U.S. Implementation	843

Senate Committee on Foreign Relations, <i>International Convention on the Prevention and Punishment of the Crime of Genocide 1986 Lugar/Helms/Hatch Provisos as Approved by the Foreign Relations Committee</i>	843
Extract: <i>Vol. XII-7 UNA/USA Washington Weekly Report 1-3</i>	847
U.S. Legislation <i>Genocide, 18 U.S.C. §§ 1091–1093</i>	849
U.N. Human Rights Commission, <i>Res. 1987/25, Status of the Convention on the Prevention and Punishment of the Crime of Genocide</i>	851
Paust, <i>Congress and Genocide . . .</i>	851
<b>Chapter 11 • Human Rights</b>	<b>855</b>
Section 1 General Human Rights	855
A. The United Nations Charter	855
B. The International Covenant on Civil and Political Rights	856
C. The American Declaration and O.A.S. Charter	858
Section 2 Torture and Other Inhumane Acts	859
<i>Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</i>	859
Section 3 Race Discrimination	868
A. General Discrimination	868
<i>International Convention on the Elimination of All Forms of Racial Discrimination</i>	868
B. Apartheid	869
<i>International Convention on the Suppression and Punishment of the Crime of “Apartheid”</i>	869
Section 4 Hostage-Taking	869
<i>International Convention Against the Taking of Hostages</i>	869
<i>Security Council Resolution Condemning Hostage-Taking</i>	870
<i>United States v. Alvarez-Machain</i>	870
<i>United States v. Yunis</i>	870
<i>United States v. Yunis</i>	870
Section 5 Disappearances	870
<i>Inter-American Convention on the Forced Disappearance of Persons</i>	871
<b>Chapter 12 • Terrorism</b>	<b>873</b>
Section 1 The Problem of Definition	873
Introductory Problem	873
Michael P. Scharf, <i>Symposium: “Terrorism on Trial:” Defining Terrorism as the Peacetime Equivalent of War Crimes: Problems and Prospects</i>	874
Section 2 The Multilateral Legal Framework	892
Introductory Note	892
A. U.N. Terrorism Resolutions	892
<i>U.N. G.A. Resolution 46/51</i>	892
B. The Anti-Terrorism Conventions	894

John F. Murphy, <i>The Future of Multilateralism and Efforts to Combat International Terrorism</i>	894
<i>Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft</i>	899
<i>1971 Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation</i>	899
<i>18 U.S.C. § 32, Destruction of Aircraft or Aircraft Facilities</i>	899
<i>49 U.S.C. App. § 1301, Definitions</i>	900
<i>Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation</i>	901
<i>1970 Hague Convention on the Suppression of Unlawful Seizure of Aircraft (Hijacking)</i>	901
<i>1973 Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents</i>	901
<i>1979 International Convention Against the Taking of Hostages</i>	901
<i>Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation</i>	901
<i>Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf</i>	901
Section 3 Domestic Legislation	905
Introductory Note	905
<i>18 U.S.C. § 2332. Criminal penalties</i>	906
<i>Legislative History, P.L. 99-199</i>	906
Table of Cases	
(A Table of Cases will be available online through <a href="http://www.cap-press.com">www.cap-press.com</a> )	
Index	913

# Preface

---

In this coursebook, editors with academic, governmental, and private practice backgrounds combine their various experiences and viewpoints to produce a fairly thorough coverage of international and transnational criminal law—with special emphasis on responsibilities (both individual and state); jurisdictional considerations; U.S. and Canadian fora and competencies; extradition, rendition and related matters; international cooperative efforts; international prosecutorial fora; various international crimes; and various matters of defense.

As we submit materials for publication, we are aware that current events will require supplementation especially of Chapter Seven. Opening statements are being made in the *Tadic* case before the International Criminal Tribunal for the Former Yugoslavia (ICTY). Indictments have been issued concerning alleged crimes in Rwanda and we expect new developments in connection with the International Criminal Tribunal for Rwanda (ICTR) by the time of publication. Additionally, there are historic efforts being made to create a permanent International Criminal Court. Regional international criminal tribunals are also being contemplated, offering new areas of practice and concern. The United Kingdom has recently announced its intention to prosecute an alleged Nazi war criminal under legislation that has not been used for decades. The U.S. and Canada have yet to make adequate efforts in this regard. Nonetheless, major concern with terrorism and drug trafficking have propelled our two countries into greater efforts and new cooperative arrangements, especially concerning so-called narco-terrorism, organized crime, and money laundering. Recurrent problems, and strains, remain with respect to processes of extradition and kidnapping. Civil claims also proceed in domestic courts, as in the case of *Kadic v. Karadzic* in the U.S. Second Circuit. In short, there are exciting new developments that will shape international criminal law for decades.

We are pleased to offer the first major coursebook for students in Canada, the United States, and elsewhere on International Criminal Law and expect that with its publication professors in areas of international law and/or criminal law will increasingly participate in a growing field of law that is clearly part of the needed curriculum for the next century.

The Editors  
May of 1996

This third edition of the coursebook has been updated and revised, especially in view of developments in the International Criminal Tribunals for the Former Yugoslavia and for Rwanda and at the Rome Conference in 1998, leading to the creation of the Statute of the International Criminal Court (ICC) and its functioning. There are numerous notes

and case extracts from decisions of the ICTY and ICTR. Most of the documents are found in the Documents Supplement accompanying this third edition.

With recent developments, this course has become all the more important as a supplement to any international law program.

The Editors

July 2006

This fourth edition has been extensively updated and revised, especially in view of more recent events and case trends in the ICTY and ICTR in connection with types of criminal responsibility and the core crimes of Genocide, other Crimes Against Humanity, and War Crimes. Additional subtitles with respect to forms of responsibility also appear in Chapter Two, Section One and in a few other places. A table of cases for the fourth edition will be available online through [www.cap-press.com](http://www.cap-press.com).

The Editors

October 2012