

# Human Rights Module

---

---

On Crimes Against Humanity, Genocide,  
Other Crimes Against Human Rights,  
and War Crimes

THIRD EDITION

including revised extracts from

Paust, Bassiouni, Scharf, Sadat, Gurulé, Zagaris  
International Criminal Law (4 ed. 2013)



CAROLINA ACADEMIC PRESS  
Durham, North Carolina

Copyright © 2014  
Jordan J. Paust, M. Cherif Bassiouni, Michael Scharf,  
Leila Sadat, Jimmy Gurulé, Bruce Zagaris  
All Rights Reserved

ISBN 978-1-61163-498-3  
LCCN 2013946722

Carolina Academic Press  
700 Kent Street  
Durham, NC 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

# Contents

---

---

PART ONE · CASES AND MATERIALS	1
Chapter 1 · Human Rights Law	3
Section 1 Nature and Sources of International Law	3
Introduction	3
A. <i>Obligatio Erga Omnes</i> and <i>Jus Cogens</i>	5
Human Rights Committee, General Comment on Issues Relating to Reservations Made Upon Ratification or Accession to the Covenant and Optional Protocols, U.N. Doc. CCPR/c/21/rev.1/add.6, General Comment No. 24, Para. 8 (Nov. 2, 1994).	5
Johann Bluntschli, Modern Law of Nations of Civilized States (1867)	6
Note	6
B. Additional Consideration of Customary International Law	6
Jordan J. Paust, Customary International Law: Its Nature, Sources and Status as Law of the United States 12 Mich. J. Int'l L. 59, 63–74 (1990), revised in International Law as Law of the United States 4-7 (2 ed. 2003)	6
C. Constitutional Bases and Status	8
Jordan J. Paust, International Law as Law of the United States 7-14 (2 ed. 2003)	8
Historic Reach of the Law of Nations	9
Forms of Incorporation of International Law	10
Notes	12
Ex parte Quirin, 317 U.S. 1, 27–30 (1942)	13
Note	14
The War Crimes Act, 18 U.S.C. § 2441 (2006)	14
Note	17
Section 2 Individual Responsibility	17
An Introduction to General Types of Responsibility	17
Resolution of 1781, 21 Journals of the Continental Congress 1136-37	17
Opinion and Judgment of the International Military Tribunal at Nuremberg, (October 1, 1946)	18
Principles of the Nuremberg Charter and Judgment, Formulated by the International Law Commission, and adopted by G.A.	

Res. 177 (II)(a), 5 U.N. GAOR, Supp. No. 12, at 11–14, para. 99, U.N. Doc. A/1316 (1950)	19
Report of the Secretary-General Pursuant to Paragraph 2 of Security Council Resolution 808 (1993) paras. 52–59, U.N. Doc. S/25704 (3 May 1993)	20
The Prosecutor v. Blagojevic & Jokic, IT-02-60-T (Trial Chamber, Judgement on Motions for Acquittal Pursuant to Rule 98 bis) (5 April 2004)	21
Notes and Questions	22
Section 3 General Human Rights	28
A. The United Nations Charter	29
B. The International Covenant on Civil and Political Rights	30
C. The American Declaration and O.A.S. Charter	32
D. Torture and Other Inhumane Acts	33
Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85	33
Questions	33
E. Race Discrimination	42
1. General Discrimination	42
International Convention on the Elimination of All Forms of Racial Discrimination, 660 U.N.T.S. 195	42
Question	42
2. Apartheid	43
International Convention on the Suppression and Punishment of the Crime of “Apartheid,” done in New York, Nov. 30, 1973, 1015 U.N.T.S. 243	43
Notes and Questions	43
F. Hostage-Taking	43
International Convention Against the Taking of Hostages, 1316 U.N.T.S. 205 (1979)	43
Questions	43
Security Council Resolution Condemning Hostage-Taking, U.N. S.C. Res. 579 (1985)	44
G. Disappearances	44
Inter-American Convention on the Forced Disappearance of Persons, done in Belen, Brazil, June 9, 1994	45
Questions	45
The Velásques Rodríguez Case, Inter-Am. Ct. Hum. Rts., Judgment (29 July 1988)	46
 Chapter 2 · Crimes Against Humanity	 49
Fictional Introductory Problem	49
Burundi v. Bagosora, Indictment # 3-19-97, in the Trial Court of Burundi	49
Motion to Dismiss the Indictment	50
Section 1 Nuremberg and Earlier	50
The Prosecutor v. Akayesu, ICTR-96-4-T (2 Sept. 1998)	51

Report of Justice Robert H. Jackson to the President of the United States, released June 7, 1945	52
International Military Tribunal at Nuremberg, Indictment Number 1	53
Judgment of the International Military Tribunal at Nuremberg (1946)	55
Notes	55
Control Council Law No. 10, art. II(1)(c) (1945)	56
Telford Taylor, Final Report to the Secretary of the Army on the Nuernberg War Crimes Trials Under Control Council Law No. 10, at 64–65, 69, 224–226 (1949)	56
United States v. Altstoetter, et al. (“The Justice Case”)	58
Notes and Questions	59
Section 2 Eichmann Trial (Israel)	62
The Attorney General of the Government of Israel v. Adolf, the Son of Karl Adolf Eichmann, Criminal Case No. 40/61 (1961)	62
Attorney General of Israel v. Eichmann, Israel, Supreme Court 1962, 36 Int’l L. Rep. 277, 277–78, 287–89, 294–97, 304 (1968)	63
Notes and Questions	66
Section 3 Barbie, Touvier and Papon Trials (France)	67
Matter of Barbie	67
Notes and Questions	73
Matter of Touvier	74
Leila Sadat Wexler, The Interpretation of the Nuremberg Principles by the French Court of Cassation: From Touvier to Barbie and Back Again, 32 Colum. J. Transnat’l. L. 289, 347–56, 358–62, 366–67, 379–80 (1994)	74
New French Criminal Code	80
Notes and Questions	80
Section 4 Mugesera Case (Canada)	81
Mugesera v. Canada 2005 SCC 40 (S. Ct. Canada 2005), 2 S.C.R. 100	81
Note	85
Section 5 Newer International Prosecutions	86
A. The International Criminal Tribunals for the Former Yugoslavia and Rwanda and the Special Court for Sierra Leone	86
J. Paust, Threats to Accountability After Nuremberg: Crimes Against Humanity, Leader Responsibility and National Fora, 12 N.Y.L.S. J. H.R. 547 (1995)	86
Notes and Questions	89
The Prosecutor v. Rutaganda, ICTR-96-3-T (6 Dec. 1999)	91
The Prosecutor v. Musema, ICTR-96-13-T (27 Jan. 2000)	93
Questions	95
B. The Rome Statute for the International Criminal Court and its Application	98
Notes and Questions	100
Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya, No. ICC-01/09 (31 Mar. 2010)	102
Notes and Questions	110

<b>Chapter 3 · Genocide</b>	113
Section 1 The Convention	113
Convention on the Prevention and Punishment of the Crime of Genocide, 78 U.N.T.S. 277	113
Questions	114
A. Prosecutions Before the International Criminal Tribunal for Rwanda, <i>The Prosecutor v. Jean-Paul Akayesu</i> , ICTR-96-4-T (2 Sept. 1998)	116
Notes and Questions	122
<i>The Prosecutor v. Rutaganda</i> , ICTR-96-3-T (6 Dec. 1999)	125
<i>The Prosecutor v. Musema</i> , ICTR-96-13-T (27 Jan. 2000)	127
Notes and Questions	128
B. Prosecutions Before the International Criminal Tribunal for Former Yugoslavia	131
Notes and Questions	134
Section 2 Application in Bangladesh	134
Paust & Blaustein, <i>War Crimes Jurisdiction and Due Process:     The Bangladesh Experience</i> , 11 <i>Vand. J. Trans. L.</i> 1 (1978)	134
Notes	136
Section 3 Genocide and Politicide	136
Paust, <i>Aggression Against Authority: The Crime of Oppression,     Politicide and Other Crimes Against Human Rights</i> , 18 <i>Case     W. Res. J. Int'l L.</i> 283, 292–94, 304–05 (1986)	136
Hurst Hannum, <i>International Law and Cambodian Genocide:     The Sounds of Silence</i> , 11 <i>Human Rights Q.</i> 82 (1989)	137
Questions	141
Section 4 U.S. Implementation	142
Senate Committee on Foreign Relations, <i>International Convention     on the Prevention and Punishment of the Crime of Genocide</i> , S. Exec. Rept. No. 92-6, 92d Cong., 1st Sess. 1–18 (4 May 1971)	142
Questions	145
1986 Lugar/Helms/Hatch Provisos as Approved by the Foreign Relations Committee	145
Extract: Vol. XII-7 UNRWA/USA Washington Weekly Report 1-3 (21 Feb. 1986)	146
U.S. Legislation	148
U.N. Human Rights Commission, Res. 1987/25, <i>Status of the     Convention on the Prevention and Punishment of the Crime     of Genocide</i>	149
Notes and Questions	150
Paust, <i>Congress and Genocide</i>	150
Questions	152
 <b>Chapter 4 · War Crimes</b>	 155
Introductory Note	155
Introductory Problem	156
Indictment of Fawaz Hussein	156
Sources of International Humanitarian Law	158

Section 1 Applicability	159
U.S. Army Field Manual 27-10, The Law of Land Warfare (1956)	159
J. Pictet (ed.), IV Commentary, Geneva Convention Relative to the Protection of Civilian Persons in Time of War (1958)	161
Paust & Blaustein, War Crimes Jurisdiction and Due Process: The Bangladesh Experience, 11 Vand. J. Trans. L. 1, 11–15 (1978)	163
Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I) 8 June 1977	165
Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of non-international armed conflicts (Protocol II) 8 June 1977	165
Notes and Questions	165
The Geneva Protocols	177
Other Aspects of Internal Versus International Armed Conflicts	179
Section 2 Types of War Crimes	181
A. General	181
U.S. Dep't of Army Field Manual 27-10, The Law of Land Warfare (1956)	181
Notes and Questions	182
The Prosecutor v. Dusko Tadic, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, ICTY Appeals Chamber, IT-94-1-AR72 (2 Oct. 1995)	184
Notes and Questions	190
B. Conduct of Hostilities and Other Protections	195
U.S. Dep't of Army FM 27-10, The Law of Land Warfare (1956)	195
The Declaration of St. Petersburg, (1868) (extract)	196
Hague Declaration No. IV, July 29, 1899, para. 3	197
Geneva Protocol of 1925, (Protocol prohibiting the use in War of Asphyxiating, Poisonous or other Gases, and of Bacteriological Methods of Warfare), done in Geneva 17 June 1925, L.N.T.S. 1929 No. 2138, 26 U.S.T. 571, T.I.A.S. No. 8061	197
Hague Convention (No. IV) Respecting the Laws and Customs of War (1907)	197
Notes and Questions	197
The Dreierwalde Case Trial of Karl Amberger (Formerly Oberfeldwebel), Case No. 7, BRITISH MILITARY COURT, WUPPERTAL, 11th—14th March, 1946 from U.N. War Crimes Commission, Law Reports of Trials of War Criminals, 81, 86–87 (1947)	205
United States v. von Leeb, et al., 10 Trials of War Criminals 3, 11 Trials of War Criminals 528–29, 562–63 (1948) (The High Command Case)	206
United States v. List, et al., 11 Trials of War Criminals 757, 1248–49, 1250, 1252–54, 1270–71 (1948) (The Southeast [Hostages] Case)	208
Notes and Questions	211

Instructions for the Government of Armies of the United States in the Field, General Orders No. 100 (1863) (the Lieber Code)	213
Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949, 75 U.N.T.S. 287	213
Geneva Convention Relative to the Treatment of Prisoners of War, 12 August 1949, 75 U.N.T.S. 135	213
Notes and Questions	213
<b>Chapter 5 · Civil Sanctions</b>	<b>223</b>
A. The Right of Access and to a Remedy	223
General Comment No. 13, Report of the Human Rights Committee 39 U.N. GAOR, Supp. (No. 40), at 143, U.N. Doc. A/39/40 (Twenty-first session 1984), reprinted at International Human Rights Instruments, U.N. Doc. HRI/GEN/1 (4 September 1992), at 13.	223
General Comment No. 15, 41 U.N. GAOR, Supp. No. 40, Annex VI, at 117, U.N. Doc. A/41/40 (Twenty-third session 1986), reprinted at International Human Rights Instruments, U.N. Doc. HRI/GEN/1 (4 September 1992), at 17–19.	223
General Comment No. 24, U.N. Doc. CCPR/c/21/rev.1/add/6 (Nov. 2, 1994)	224
Notes and Questions	225
B. U.S. Federal Statutes	226
Alien Tort Claims Act (ATCA or ATS), 28 U.S.C. § 1350	226
Torture Victim Protection Act (TVPA), Public Law 102-256, 106 Stat. 73 (1992)	226
The Antiterrorism Act (ATA), 18 U.S.C. §§ 2331-2337	227
Notes and Questions	229
C. Cases	233
Filartiga v. Pena-Irala, 630 F.2d 876 (2d Cir.1980)	233
Filartiga v. Pena-Irala, 577 F. Supp. 860 (E.D.N.Y. 1984)	241
Notes and Questions	242
Forti v. Suarez-Mason, 672 F. Supp. 1531 (N.D. Cal. 1987)	245
Forti v. Suarez-Mason, 694 F. Supp. 707 (N.D. Cal. 1988)	253
Notes and Questions	255
Paul v. Avril, 812 F. Supp. 207 (S.D. Fla. 1993)	257
Question	259
Xuncax v. Gramajo, 886 F. Supp. 162 (D. Mass. 1995)	259
Notes and Questions	263
Kadic v. Karadzic, 70 F.3d 232 (2d Cir. 1995), cert. denied, 518 U.S. 1005 (1996)	263
Notes and Questions	271
Almog v. Arab Bank, PLC 471 F. Supp.2d 257 (E.D.N.Y. 2007)	273
Note	277
Sosa v. Alvarez Machain, 542 U.S. 692 (2004)	277
Notes and Questions	288
Kiobel, et al. v. Royal Dutch Petroleum Co., et al., __ U.S. __ (2013)	292
Notes and Questions	306



<b>PART TWO · DOCUMENTS SECTION</b>	<b>311</b>
United States Constitution	313
Charter of the United Nations, T.S. 993, 59 Stat. 1031, 1976 Y.B.U.N. 1043 (June 26, 1945)	315
Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations, October 24, 1970, U.N. G.A. Res. 2625, 25 U.N. GAOR, Supp. No. 28, at 121, U.N. Doc. A/8028 (1971)	322
Universal Declaration of Human Rights, U.N. G.A. Res. 217A, 3 U.N. GAOR, U.N. Doc. A/810, at 71 (1948)	325
International Covenant on Civil and Political Rights, (ICCPR) 999 U.N.T.S. 171 (Dec. 9, 1966)	330
American Declaration of the Rights and Duties of Man, OAS Res. XXX (1948), OAS Off. Rec. SEA/Ser. L/V/I.4 Rev. (1965)	346
American Convention on Human Rights, OAS Treaty Ser. No. 36 (1969), 144 U.N.T.S. 123	349
Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1465 U.N.T.S. 85 (Dec. 10, 1984)	359
Instructions for the Government of Armies of the United States in the Field, General Orders No. 100 (1863) (the 1863 Lieber Code)	363
Hague Convention (No. IV) Respecting the Laws and Customs of War on Land, and Annex, done at The Hague, Oct. 18, 1907, 36 Stat. 2277, T.S. No. 539, 1 Bevans 631	368
List of War Crimes Prepared by the Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties, Presented to the Preliminary Peace Conference, Paris, 29 March 1919 (members: Belgium, British Empire, France, Greece, Italy, Japan, Poland, Roumania, Serbia, United States)	373
Geneva Convention Relative to the Treatment of Prisoners of War of 12 August 1949, 75 U.N.T.S. 135, 6 U.S.T. 3316, T.I.A.S. No. 3364	375
Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949 (GC)	385
Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I), 8 June 1977	400
Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of non-international armed conflicts (Protocol II), 8 June 1977	414
Charter of the International Military Tribunal at Nuremberg, Annex to the London Agreement (8 Aug. 1945), 82 U.N.T.S. 279	421
Tokyo Charter for the International Military Tribunal for the Far East (1946), as amended by General Orders No. 20 (26 April 1946), T.I.A.S. No. 1589	428
Allied Control Council Law No. 10 (20 Dec. 1945), Control Council for Germany, Official Gazette 50 (Jan. 31, 1946)	433

Principles of the Nuremberg Charter and Judgment, Formulated by the International Law Commission, 5 U.N. GAOR, Supp. No. 12, at 11–14, para. 99, U.N. Doc. A/1316 (1950)	436
Statute of the International Criminal Tribunal for Former Yugoslavia, U.N. S.C. Res. 827 (1993)	437
Statute of the International Tribunal for Rwanda, U.N. S.C. Res. 955 (8 Nov. 1994)	446
Rome Statute of the International Criminal Court, Adopted by the U.N. Diplomatic Conference, July 17, 1998	457
Convention on the Prevention and Punishment of the Crime of Genocide, 78 U.N.T.S. 277 (1948)	521
International Convention on the Suppression and Punishment of the Crime of “Apartheid,” done in New York, Nov. 30, 1973, 1015 U.N.T.S. 243 (1974)	523
International Convention on the Elimination of All Forms of Racial Discrimination, 660 U.N.T.S. 195 (1966)	525
International Convention Against the Taking of Hostages, 1316 U.N.T.S. 205 (1979)	532
International Convention for the Protection of All Persons From Enforced Disappearance, adopted by U.N. G.A. Res. 61/177 (20 Dec. 2006)	537
Inter-American Convention on the Forced Disappearance of Persons, done in Belen, Brazil, June 9, 1994	551
Protection of Human Rights and Fundamental Freedoms While Countering Terrorism, U.N. G.A. Res. 59/191 (20 Dec. 2004)	556
Human Rights and Terrorism, U.N. G.A. Res. 59/195 (20 Dec. 2004)	557
Lawfulness of Detentions by the United States in Guantanamo Bay, Parliamentary Assembly, Council of Europe, Resolution 1433 (26 April 2005)	559

# Preface

---

---

The Human Rights Module has been prepared for those teaching human rights courses or seminars who wish to supplement whatever other materials they are using in order to assure adequate, up-to-date exploration of the nature and sources of human rights, human rights litigation in the U.S., and “core” international crimes most often associated with human rights infractions. “Core” crimes addressed here include attention to crimes against humanity, genocide, other crimes against human rights (such as torture, criminalized race discrimination, apartheid, hostage-taking, and disappearances), and war crimes. The Module should also prove useful as supplemental material for other international law courses or seminars where a focus on crimes against humanity, genocide, and other crimes against human rights, and/or war crimes is desired—perhaps a course or seminar on counter-terrorism addressing the law of war and human rights in particular. The Module is self-contained, providing needed cases and materials as well as a separate Documents Section in Part Two of the Module.

Some who use the Human Rights Module might prefer to concentrate on Chapters 1–3 and avoid inclusion of Chapter 4 on war crimes. Others might prefer to use the first four chapters and not Chapter 5 (which addresses civil sanctions) and some might prefer to use all five chapters in their course or seminar. Especially after the first AALS Workshop on Human Rights, held in 1999, it is our understanding that most law professors who teach human rights courses or seminars supplement assigned textbooks with other materials or find that present textbooks preclude adequate or more detailed and up-to-date attention to areas of special interest, such as those reflected in the special focus of the Module. The Module was prepared in part to meet such needs and to provide a self-contained set of cases, materials and documents that can be used in a few or several weeks.

We hope that you find the Module especially useful and we are eager to receive your comments and suggestions for improvement.

The Editors

2013