

International Criminal Law

International Criminal Law

Cases and Materials

FIFTH EDITION

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To—
Cheryl L. Segal
↻
Amelia H. Boss
↻
Dalton and Adelaide

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Preface

This book contains a collection of cases, materials, notes, and questions concerning international criminal law. It is designed for use as a teaching tool, not as a reference work, although it does try to provide an overview of most of the topics that fall within the scope of international criminal law.

We have tried to keep the book short, as casebooks go, and to make it usable both by teachers who want to emphasize the increasingly important transnational dimension of U.S. criminal law and by those who want to explore the increasingly important use of criminal sanctions to enforce norms of international law. These two developments are interrelated and it is more and more difficult, in any event, to keep them separate.

The book is divided into four parts. The first part contains a brief introduction to the field of international criminal law, the question of what crimes are international crimes, and a chapter on the general jurisdictional principles, of both national and international law, that govern efforts to extend U.S. criminal law to foreign crimes and foreign criminals. The second part contains materials dealing with the specific application of those principles (especially in the United States) in cases involving the Foreign Corrupt Practices Act, antitrust and securities regulation, export controls, computer crimes, narcotics and money laundering, piracy and terrorism, human trafficking, and torture. In this fifth edition, a new chapter was added to this part to cover transnational organized crime. The third part deals with procedural aspects of trying such cases in the U.S. courts—and sometimes the courts of other countries. It covers the extraterritorial application of the U.S. Constitution, immunities from jurisdiction, mutual assistance in criminal cases, extradition, alternatives to extradition, prisoner transfer treaties, recognition of foreign criminal judgments and foreign laws, and the bearing of international human rights instruments on criminal procedure. The fourth and final part of the book deals with the prosecution of international crimes, including the Nuremberg and Tokyo precedents, the ad hoc tribunals for the former Yugoslavia and for Rwanda, the Rome Statute of the International Criminal Court, and the substantive law of the international crimes of aggression, genocide, crimes against humanity, and war crimes.

Our main focus in the first three parts is on relatively recent decisions of the United States courts and the effect of contemporary globalization on U.S. criminal

law. We have tried, above all, to convey a sense of the “international flavor” that is developing in federal prosecutions.* As a result of this particular focus, some topics have been slighted that might figure more prominently in a longer, more comprehensive work on international criminal law. Nevertheless, we believe that the fourth part of the book provides the students an in-depth account of that other burgeoning area, the prosecution of grave crimes at the international level. In choosing material in this part, we have been particularly conscious of the value in directing students to international sources of material that are not always obvious to students and faculty in American law schools.

Our basic aim, in short, has been to construct a set of teaching materials that will provide students with a grounding in the transnational issues likely to arise in federal criminal cases and also in the law that has been produced as a consequence of international efforts to impose criminal responsibility on the perpetrators of human rights atrocities.

This book tries to provide a picture of the present state of a rapidly expanding and changing field. Events no doubt will quickly overtake much of what we present. We only hope that, in the meanwhile, teachers and students will be persuaded through using this book to regard international criminal law as an exciting field, worthy of their continuing attention as it grows and develops, as it inevitably will, in new directions.

We thank the American Law Institute for permission to reprint sections from the RESTATEMENT (THIRD & FOURTH) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES, 1987, The American Law Institute; and other copyright holders, including the VIRGINIA JOURNAL OF INTERNATIONAL LAW, Jack L. Goldsmith & Eric Posner (p. 30); the American Society of International Law (excerpt on p. 491 from 94 AJIL 535-36 (2000), © The American Society of International Law); the Academy of Political Science (excerpt on pp. 808–09 from the POLITICAL SCIENCE QUARTERLY, 1947); and Alfred P. Rubin (quotation on p. 956).

We also thank Professor Edward Wise, who was the lead author on the first edition of the book, but passed away thereafter. He noted the significant influence of Gerhard O.W. Mueller, who first introduced him to the problems of international criminal law, defined in the most comprehensive possible fashion, decades ago.**

In this fifth edition, the authors thank several very important people.

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* For a preliminary sketch, see Ellen S. Podgor, Essay, *Globalization and the Federal Prosecution of White Collar Crime*, 34 AM. CRIM. L. REV. 325 (1997).

** See Edward M. Wise, *Gerhard O.W. Mueller and the Foundations of International Criminal Law*, in CRIMINAL SCIENCE IN A GLOBAL SOCIETY: ESSAYS IN HONOR OF GERHARD O.W. MUELLER 45 (Edward M. Wise ed., 1994).

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