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Second Edition



Antonio Cassese

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ANTONIO CASSESE

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PREFACE

In this book I have tried succinctly to expound the fundamentals of both substantive and procedural international criminal law. In so doing, I have made an effort to conceptualize as much as possible; that is, give what I hope is a coherent theoretical framework to the patchwork of disparate rules, principles, concepts, and legal constructs that at present make up international criminal law.

I would be content if this book could serve as a general introduction, for both students and practitioners, to this fascinating branch of law and as a stimulus to other scholars or practitioners to delve deeper into the basic notions of international criminal law.

All the national or international cases that seemed relevant to a particular matter under discussion have been cited. The purpose of my mentioning cases (mostly in footnotes, in order to make the text smoother) is not only to support a specific proposition by reference to the jurisprudence relating thereto, or to show how courts have applied a rule of law, or what interpretation they have placed on it. My aim is also to point to the historical and human dimension of cases. For this purpose, I have as far as possible recounted the facts behind the courts' legal findings. For one should never forget that this body of law, more than any other, results from a myriad of smaller or greater tragedies. Each crime is a tragedy, for the victims and their relatives, the witnesses, the community to which they belong, and even the perpetrator who, when brought to trial, will endure the ordeal of criminal proceedings and, if found guilty, may suffer greatly, in the form of deprivation of life, at worst, or of personal liberty, at best. Law, it is well known, filters and rarefies the halo of horror and suffering surrounding crimes. As a consequence, when one reads a law book or a judgment, one may tend to forget the violent origin of criminal law prescriptions. That origin, however, remains the underpinning of those prescriptions. To recall it may serve as a reminder of the true historical source of criminal law. This branch of law is about human folly, wickedness, and aggressiveness. It deals with the darkest side of our nature. It also deals with how society confronts vicious violence and seeks to stem it as far as possible so as 'to make gentle the life on this world'.

To provide the English-speaking reader with details of cases in other languages, I have relied extensively upon relevant judgments in Dutch, French, German, Italian, and Spanish, besides the most significant cases in English. Translations are mine, unless indicated to the contrary.

The reader interested in consulting the treaties and other documents cited in this book, as well as the relevant legal literature in English, may use the Oxford University Press companion web site: www.oup.com/uk/best.textbooks/law/cassese_internationalcriminallaw

I am grateful to Laura Magi for skilfully helping me revise, update, and enrich this text.

In this second edition I have restructured the book, revised and updated all the chapters, and expunged some sections that have now appeared to me to be less relevant.

I am much beholden to Paola Gaeta for kindly reading and making insightful comments on some chapters. Of course, the responsibility for any misapprehension that may remain rests solely with me.

ABBREVIATIONS

2004 UK <i>Manual</i>	UK Ministry of Defence, <i>The Manual of the Law of Armed Conflict</i> (Oxford: Oxford University Press, 2004)
AC	Appeals Chamber
AILC	American International Law Cases
AJ	Appeal Judgment
AJCL	<i>American Journal of Comparative Law</i>
AJIL	<i>American Journal of International Law</i>
Ashworth, <i>Principles</i>	Ashworth, A., <i>Principles of Criminal Law</i> , 5th edn (Oxford: Oxford University Press, 2006)
BILC	British International Law Cases
British Military Manual	The War Office, <i>The Law of War on Land</i> (being Part III of the Manual of Military Law) (London: War Office, 1958)
<i>Bull. Crim.</i>	<i>Bulletin des arrêts de la Cour de Cassation, Chambre criminelle</i> (Paris)
BYIL	<i>British Yearbook of International Law</i>
Cassese, Gaeta, and Jones, <i>ICC Commentary</i>	Cassese, A., Gaeta, P., Jones, J. R. W. D. (eds), <i>The Rome Statute of the International Criminal Court—A Commentary</i> (Oxford: Oxford University Press, 2002)
CLForum	<i>Criminal Law Forum</i>
CLR	<i>Columbia Law Review</i>
CrimLR	<i>Criminal Law Review</i>
Delmas-Marty and Spencer, <i>European Criminal Procedures</i>	M. Delmas-Marty and J. A. Spencer (eds), <i>European Criminal Procedures</i> (Cambridge: Cambridge University Press, 2002)
ECCC	Extraordinary Chambers in the Courts of Cambodia
EJIL	<i>European Journal of International Law</i>
<i>Entscheidungen</i>	<i>Entscheidungen des Obersten Gerichtshofes für die Britische Zone—Entscheidungen in Strafsachen</i> , 3 vols (Berlin and Hamburg: Walter de Gruyter, 1949–51)
Fischer, Kress, Lüder, <i>International and National Prosecution</i>	Fischer, H., Kress, C., Lüder, S. R. (eds), <i>International and National Prosecution of Crimes under International Law—Current Developments</i> (Berlin: Berlin Verlag Arno Spitz, 2001)
Fletcher, <i>Basic Concepts</i>	Fletcher, G. P., <i>Basic Concepts of Criminal Law</i> (New York and Oxford: Oxford University Press, 1998)

Fletcher, <i>Rethinking</i>	Fletcher, G. P., <i>Rethinking Criminal Law</i> (Boston and Toronto: Little, Brown & Co., 1974)
Friedman	Friedman, L., <i>The Law of War—A Documentary History</i> , 2 vols (New York: Random House, 1972)
FRUS	Papers relating to the Foreign Relations of the United States
FRY	Federal Republic of Yugoslavia (Serbia and Montenegro)
GA	General Assembly of the United Nations
Glaser, <i>Culpabilité</i>	Glaser S., ‘Culpabilité en droit international pénal’, 99 HR (1960–I), 473–591
Glaser, <i>Introduction</i>	Glaser S., <i>Introduction à l’étude du droit international pénal</i> (Bruxelles, Paris : Bruylant-Recueil Sirey, 1954)
GP	<i>Giustizia penale</i>
HILJ	<i>Harvard International Law Journal</i>
HLR	<i>Harvard Law Review</i>
HR	<i>Recueil des Cours de l’Académie de droit international de La Haye</i>
IA	Interlocutory appeal
IACHR	Inter-American Commission of Human Rights
ICC	International Criminal Court
ICJ	International Court of Justice
ICLQ	<i>International and Comparative Law Quarterly</i>
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
ILR	<i>International Law Reports</i>
IMT	International Military Tribunal for the Major War Criminals, Nuremberg
IMTFE	International Military Tribunal for the Far East, Tokyo
IMT Tokyo	R. J. Pritchard and S. Magbanua Zaide (eds) <i>The Tokyo War Crimes Trial</i> (The Complete Transcripts of the Proceedings of the International Military Tribunal for the Far East), (New York and London: Garland Publishing House, 1981)
International Conference on Military Trials	<i>Report of Robert H. Jackson, United States Representative to the International Conference on Military Trials, London 1945</i> (Washington DC: Department of State, 1949)

IRRC	<i>International Review of the Red Cross</i>
IYHR	<i>Israeli Yearbook on Human Rights</i>
IYIL	<i>Italian Yearbook of International Law</i>
JAIL	<i>Japanese Annual of International Law</i>
JCP	<i>Journal of International Criminal Justice</i>
Jescheck, Lehrbuch	Jescheck, H. H., <i>Lehrbuch des Strafrechts, Allgemeiner Teil</i> , (ed. by T. Weigend), Berlin: Duncker und Humblot, 1996
JICJ	<i>Juris-classeur périodique (la semaine juridique)</i> , France
Justiz und NS-Verbrechen	<i>Justiz und NS-Verbrechen, Sammlung Deutscher Strafurteile wegen Nationalsozialistischer Tötungsverbrechen 1945–1966</i> , 22 vols (Amsterdam: University Press Amsterdam, 1968–75), also available on CD-ROM
Kelsen, <i>Principles</i>	Kelsen, H., <i>Principles of International Law</i> (New York: Rinehart & Co., 1952)
LJIL	<i>Leiden Journal of International Law</i>
LRTWC	<i>Law Reports of Trials of War Criminals</i> , 15 vols (London: UN War Crimes Commission, 1949)
Mettraux, <i>Landmark Decisions</i>	Mettraux G. (ed.), <i>International Criminal Law before National Courts—A Collection of Landmark Decisions</i> (Oxford: Oxford University Press, 2008, forthcoming)
NAM	Non-Aligned Movement
NederJ	<i>Nederlandse Jurisprudentie</i>
NILR	<i>Netherlands International Law Review</i>
NSDAP	German national socialist (Nazi) party
NSKK	German national socialist (Nazi) commandos
PCIJ	Permanent Court of International Justice
Pradel	Pradel, J., <i>Droit pénal comparé</i> (Paris: Dalloz, 1995)
PrepCom	Preparatory Committee on the Establishment of an International Criminal Court
P-TC	Pre-Trial Chamber
RDMDG	<i>Revue de droit militaire et de droit de la guerre</i>
RDPC	<i>Revue de droit pénal et de criminologie</i>
RGDIP	<i>Revue générale de droit international public</i>
Röling, <i>The Law of War</i>	Röling, B. V. A., ‘The Law of War and the National Jurisdiction since 1945’, 100 HR (1960–II), 329–453

RPE	Rules of Procedure and Evidence
SA	Sturm Abteilung (Nazi paramilitary force)
Sassòli and Bouvier	M. Sassòli and A. Bouvier (eds), <i>How Does Law Protect in War? Cases, Documents and Teaching Materials</i> (Geneva: ICRC, 1999)
SC	UN Security Council
SCSL	Special Court for Sierra Leone
SG	UN Secretary-General
SJ	Sentencing judgment
Smith and Hogan	Smith and Hogan, <i>Criminal Law</i> , 9th edn (London: Butterworths, 1999)
SPSC	Special Panels for Serious Crimes
SS	Schutz Staffel (Nazi elite corps)
STL	Special Tribunal for Lebanon
TC	Trial Chamber
TJ	Trial Judgment
Trial of the Major War Criminals	<i>Trial of the Major War Criminals Before the International Military Tribunal, Nuremberg 14 November 1945–1 October 1946</i> , 42 vols (Nuremberg, 1947)
Triffterer, ICC Commentary	Triffterer, O. (ed.), <i>Commentary on the Rome Statute of the International Criminal Court</i> (Baden-Baden: Nomos, 1999)
TWC	<i>Trials of War Criminals before the Nürnberg Military Tribunals under Control Council Law no. 10</i> , 12 vols (Washington, DC: US Govt Printing Office, 1950)
UNMIK	United Nations Interim Administration in Kosovo
UNTAET	United Nations Transitional Administration in East Timor
<i>Verhandlungen</i>	<i>Verhandlungen des Reichstags I. Wahlperiode 1920</i> , Band 368, <i>Anlagen zu den Stenographischen Berichten Nr 2254 bis 2628</i> (Berlin: Julius Sittenfeld, 1924): contains the original text of the cases tried by the German Supreme Court at Leipzig
WCC	War Crimes Chamber
YIHL	<i>Yearbook of International Humanitarian Law</i>
YILC	<i>Yearbook of the International Law Commission</i>

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