

# *Fordham International Law Journal*

---

*Volume 23, Issue 5*

1999

*Article 8*

---

## Book Review: The Rights International Companion to Criminal Law & Procedure: An International Human Rights & Humanitarian Law Supplement

Bruce Zagaris\*

\*

Copyright ©1999 by the authors. *Fordham International Law Journal* is produced by The Berkeley Electronic Press (bepress). <http://ir.lawnet.fordham.edu/ilj>

# Book Review: The Rights International Companion to Criminal Law & Procedure: An International Human Rights & Humanitarian Law Supplement

Bruce Zagaris

## **Abstract**

This Book Review provides a compact supplement to teaching criminal law and procedure by providing materials on the sources and application of international human rights and humanitarian law to criminal law. Part One reviews the sources and principles of international law. Part Two contains treaties and statutes setting forth the principles of state liability and individual culpability. Part Three provides excerpts from some of the major international criminal tribunals and some of the applicable treaty law. Part Four discusses criminal procedure. Part Five contains a discussion of principles of punishment for international crimes and the consideration of the death penalty in punishment. This Book is a valuable contribution to new and dynamic aspects of the interplay between international human rights and international criminal law

## BOOK REVIEW

### THE RIGHTS INTERNATIONAL COMPANION TO CRIMINAL LAW & PROCEDURE: AN INTERNATIONAL HUMAN RIGHTS & HUMANITARIAN LAW SUPPLEMENT

*Reviewed by Bruce Zagaris\**

This Book<sup>1</sup> provides a compact supplement to teaching criminal law and procedure by providing materials on the sources and application of international human rights and humanitarian law to criminal law. The Book has five parts: (1) an overview of international criminal law and its enforcement mechanisms; (2) principles of state liability and individual culpability; (3) international crimes; (4) criminal procedure; and (5) punishment.

Part One has an overview that explains that the need to know international human rights and humanitarian law in order to understand and practice criminal law has several bases: international law is constitutional law in many countries; international law is binding on most national courts, such as the United States; international criminal law is important because such an approach permits a deeper understanding of issues often arising before domestic courts; and changing world conditions have resulted in a globalization of legal accountability. The authors rightly explain that lawyers practicing domestic criminal law cannot afford to be unknowledgeable about international criminal law. Governments increasingly are extraditing or surrendering individuals to other countries. Domestic courts are increasingly using international law to prosecute persons committing international crimes. The rising use and effectiveness of international courts has resulted in a litigation explosion over the last ten years in turn resulting in the establishment of a considerable corpus of international criminal law.

Part One reviews the sources and principles of international

---

\* Partner, Berliner Corcoran & Rowe, Washington, D.C.; Editor-in-Chief, International Enforcement Law Reporter.

1. THE RIGHTS INTERNATIONAL COMPANION TO CRIMINAL LAW & PROCEDURE: AN INTERNATIONAL HUMAN RIGHTS & HUMANITARIAN LAW SUPPLEMENT (Francisco Foitest Martin & Richard J. Wilson, eds. 1999).

law, the binding effect of human rights, humanitarian, and criminal law on U.S. and domestic courts, and the history and operations of international human rights, humanitarian, and criminal tribunals. The growth and diversity of international tribunals alone may surprise people.

Part Two first contains the treaties and statutes setting forth the principles of state liability and individual culpability. Thereafter, the case law illustrating various legal principles, such as state liability for failure to investigate, prosecute, and punish gross human rights violations and other international crimes and conspiracy and corporate responsibility are provided. After each section are questions and comments. Although brief, the questions and comments are incisive and useful.

Part Three, International Crimes, provides excerpts from some of the major international criminal tribunals and some of the applicable treaty law. Chapters discuss war crimes, crimes against peace and humanity, and grave breaches of the Geneva Conventions,<sup>2</sup> genocide, forced disappearances, and sexual violence. Contemporary cases, such as the *Dusko Tadic*<sup>3</sup> and *Jean-Paul Akayesu*<sup>4</sup> cases from the International Tribunals for Yugoslavia and Rwanda respectively, illustrate the adjudication of these principles of law. The questions and comments provide valuable analyses and trends. For instance, after discussing complicity for genocide, the authors wonder whether private arms dealers who provide weapons to persons committing genocide can be considered guilty of complicity?

Part Four, Criminal Procedure, has a chapter on police practices, which discusses: eavesdropping, search and seizure, and the exclusionary rule; arrest; court access for determining lawfulness of arrest and continuing detention; and pre-trial publicity and presumption of innocence. A second chapter on trial due process protection discusses: assistance of legal counsel; judicial and jury impartiality; examination of witnesses and docu-

---

2. Geneva Convention for the Amelioration of the Condition of the Wounded and the Sick in Armed Forces in the Field, Aug. 12, 1949, 6 U.S.T. 3114, 75 U.N.T.S. 31; Geneva Convention for the Amelioration of the Condition of Wounded, Sick, and Shipwrecked Members of Armed Forces at Sea, Aug. 12, 1949, 6 U.S.T. 3217, 75 U.N.T.S. 85; Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135; Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287.

3. *Prosecutor v. Dusko Tadic*, Case No. ICTY-94-I-T (May 7, 1997).

4. *Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T (Sept. 2, 1998).

ments; right against self-incrimination; right to speedy trial; *ex post facto* or retrospective criminal laws; and double jeopardy or *non bis in idem*. This Part has many mainstream issues for counsel involved in domestic criminal law. It deals with the frequent application of international human rights law to criminal procedure and how legal professionals must deal with, *e.g.*, bypassing judicial forms of review for certain types of crimes, such as terrorism, in Europe. The discussion in the Questions and Answers covers the jurisprudential approaches employed by international tribunals in adjudicating challenges to police power to conducting search and seizure and arrest. The authors also provide useful comparative law distinctions in the approaches to issues, such as "probable cause" or "reasonable suspicion" in making arrests, the presumption of innocence, and even the different roles of the judges in pre-trial proceedings.

The chapter on trial due process protection shows the dynamic nature of the evolution of the law of international tribunals on the rights and duties of the tribunals, prosecutors, and defense counsel in providing rights of defendants and victims, such as effective representation by counsel, rights and obligations of witnesses, rights and obligations in obtaining and contesting evidence, the use of anonymous witnesses, the right against self-incrimination, and so forth. The fact that the International Criminal Tribunals for Yugoslavia<sup>5</sup> and Rwanda<sup>6</sup> have a hybrid character, few precedents, and intense work necessarily are producing many new precedents that provide fruitful opportunities for analyses. For instance, the ability to use anonymous witnesses and the efforts to counterbalance protection of victims and witnesses with fundamental rights of defendants are quite novel and important in the development of procedural jurisprudence.

Part Five, Punishment, contains discussion of principles of punishment for international crimes and the consideration of death penalty in punishment.

The Book enables students, practitioners, academics, and policymakers to have a compact book that illustrates the increas-

---

5. Statute for the International Criminal Tribunal for the Former Yugoslavia, S.C. Res 827, U.N. SCOR, 48th Sess., 3217th mtg., U.N. Doc. S/RES/827 (1993).

6. Statute for the International Criminal Tribunal for Rwanda, S.C. Res 955, U.N. SCOR, 49th Sess., 3453rd mtg., U.N. Doc. S/RES/955 (1994).

ing interaction of international human rights and humanitarian law in criminal law and procedure, both in international and domestic tribunals.<sup>7</sup> The organization of the Book facilitates easy access to the different substantive and procedural issues. The Book has an abbreviated index. While the Book clearly is intended as a supplement to a casebook on international human rights, it would be useful if it would refer to multiple human rights texts other than the one to which it constantly refers.<sup>8</sup>

Persons interested in the Book can obtain supplemental information on the website of The Rights International Companion Series.<sup>9</sup> Under "Publications" on the website, the reader can find: a key to major texts in criminal law and procedure; and the newer cases to supplement the text. The use of electronic commerce and websites to supplement a book is quite handy.

This Book is a valuable contribution to new and dynamic aspects of the interplay between international human rights and international criminal law.

---

7. This Book is an improvement of earlier efforts to apply international human rights to criminal cases. *See, e.g.*, HURST HANNUM, MATERIALS ON INTERNATIONAL HUMAN RIGHTS AND U.S. CRIMINAL PROCEDURE (1989); GUIDE TO INTERNATIONAL HUMAN RIGHTS PRACTICE (Hurst Hannum, ed., 2d ed. 1992).

8. I FRANCISCO FORREST MARTIN, ET AL, INTERNATIONAL HUMAN RIGHTS LAW AND PRACTICE: CASES, TREATIES AND MATERIALS (1997).

9. Kluwer Law International (visited May 24, 2000) <<http://www.kluwerlaw.com>> (on file with the *Fordham International Law Journal*).