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978-1-107-08122-2 - Prosecuting Maritime Piracy: Domestic Solutions to International Crimes

Edited by Michael P. Scharf, Michael A. Newton, and Milena Sterio

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PROSECUTING MARITIME PIRACY

This book addresses maritime piracy by focusing on the unique and fascinating issues arising in the course of domestic piracy prosecutions, from the pursuit and apprehension of pirates to their trials and imprisonment. It examines novel matters not addressed in other published works, such as the challenges of preserving and presenting evidence in piracy trials, establishing the rights of pirate defendants, and contending with alleged pirates who are juveniles. A more thorough understanding of modern piracy trials and the precedent they have established is critical to scholars, practitioners, and the broader community interested in counter-piracy efforts, because these prosecutions are likely to be the primary judicial mechanism for contending with pirate activity in the future.

Michael P. Scharf is interim dean and the John Deaver Drinko–Baker & Hostetler Professor of Law at the Case Western Reserve University School of Law. He is also managing director of the Nobel Peace Prize–nominated Public International Law and Policy Group. He is the author of 17 books, including, most recently, *Shaping Foreign Policy in Times of Crisis* (2010) and *Customary International Law in Times of Fundamental Change: Recognizing Grotian Moments* (2013). During the George H. W. Bush and Clinton administrations, Scharf served in the Office of the Legal Adviser of the U.S. Department of State.

Michael A. Newton is an expert on accountability and conduct-of-hostilities issues and Professor of the Practice of Law at the Vanderbilt University Law School. He has published more than 80 articles and book chapters, as well as opinion pieces in the *New York Times*, the *International Herald Tribune*, and other newspapers. In addition to having written numerous articles on issues of international law, he is the author of *Enemy of the State: The Trial and Execution of Saddam Hussein* (2014, co-authored with Michael Scharf) and *Proportionality in International Law* (2014, co-authored with Larry May), as well as the senior editor of *Terrorism: International Case Law Reporter* (2007–2012, updated annually).

Milena Sterio is the associate dean for faculty enrichment and the Charles R. Emrick Jr.–Calfee Halter & Griswold Professor at Cleveland State University's Marshall College of Law. She has published in the *American University Law Review*, the *Connecticut International Law Journal*, and the *Fordham International Law Journal*, among other journals. She is the author of *The Right to Self-Determination under International Law: "Selfistans," Secession and the Great Powers' Rule* (2012).

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Prosecuting Maritime Piracy

DOMESTIC SOLUTIONS TO INTERNATIONAL CRIMES

Edited by

**MICHAEL P. SCHARF, MICHAEL A. NEWTON,
AND MILENA STERIO**



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assisted in drafting the Statute of the Iraqi High Tribunal, and he served as International Law Advisor to the Iraqi Judicial Chambers in 2006 and 2007. Professor Newton has taught Iraqi jurists on seven other occasions, both inside and outside Iraq, and as part of the academic consortium he assists Vanderbilt students in providing substantive advice to the lawyers in Iraq. He served as the U.S. representative on the U.N. Planning Mission for the Sierra Leone Special Court and was also a member of the Special Court academic consortium. From January 1999 to August 2000, he served in the State Department's Office of War Crimes Issues. Professor Newton began his distinguished military career as an armor officer in the 4th Battalion, 68th Armor, Fort Carson, Colorado, until his selection for the Judge Advocate General's Funded Legal Education Program. As an operational military attorney, he served with the U.S. Army Special Forces Command (Airborne), Fort Bragg, North Carolina, in support of units participating in Desert Storm. Following duty as the chief of operational law, he served as the group judge advocate for the 7th Special Forces Group (Airborne). He deployed on Operation Provide Comfort to assist Kurdish civilians in Northern Iraq, as well as on a number of other exercises and operations. From 1993 to 1995 he was reassigned as the brigade judge advocate for the 194th Armored Brigade (Separate), during which time he organized and led the human rights and rules of engagement education for all multinational forces and international police deploying into Haiti. He subsequently was appointed as a professor of international and operational law at the Judge Advocate General's School in Charlottesville, Virginia, from 1996 to 1999. He currently serves as senior editor of the *Terrorism International Case Law Reporter* series published annually by Oxford University Press. Professor Newton has made numerous appearances on CNN, BBC, Court TV, and NPR, among other media outlets. He has written opinion pieces for the *New York Times* and the *International Herald Tribune* and has been widely quoted in print and broadcast media. Along with numerous published law review articles on issues of international law, he is the author of *Enemy of the State: The Trial and Execution of Saddam Hussein*, published by St. Martin's Press in 2009.

Michael P. Scharf is the Interim Dean, John Deaver Drinko-Baker & Hostetler Professor of Law, Associate Dean for Global Legal Studies, and Director of the Frederick K. Cox International Law Center at Case Western Reserve University School of Law. Scharf is the author of 74 scholarly articles and 14 books, including *Balkan Justice*, which was nominated for a Pulitzer Prize in Letters in 1997; *The International Criminal Tribunal for Rwanda*, which was awarded the ASIL's Certificate of Merit for outstanding book in 1999; *Peace with Justice* and *Enemy of the State*, which won the International Association of Penal Law's book of the year award for 2003 and 2009; *Shaping Foreign Policy in Times of Crisis*, published by Cambridge University Press in 2010; and *Customary International Law in Times of Fundamental Change: Recognizing Grotian Moments*, published by Cambridge

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Milena Sterio is Associate Dean for Faculty Enrichment and the Charles R. Emrick Jr.–Calfee Halter & Griswold Professor at Cleveland State University's Marshall College of Law. Professor Sterio earned her law degree, magna cum laude, from Cornell Law School in 2002. At Cornell, she was Order of the Coif, general editor of the *Cornell International Law Journal*, and a member of Phi Beta Kappa. In 2003, she earned a master's degree, cum laude, in Private International Law from the University Paris I-Panthéon-Sorbonne; in 2002, she earned a Maitrise en droit franco-américain cum laude, also from the Sorbonne. Her undergraduate degree, summa cum laude, in Political Science and French Literature is from Rutgers College, New Brunswick, New Jersey. Before joining the Cleveland-Marshall faculty, she was an associate in the New York City firm of Cleary, Gottlieb, Steen & Hamilton and an Adjunct Law Professor at Cornell, where she taught in the International War Crimes Clinic. Her research interests are in the fields of international law, international criminal law, international human rights, law of the seas, and private international law. She has published in the *American University Law Review*, the *Connecticut International Law Journal*, the *Fordham International Law Journal*, the *Cardozo Journal of International and Comparative Law*, the *Denver Journal of International Law and Policy*, the *Florida Journal of International Law*, and the *UC Davis Journal of International Law and Policy*. Her book, *The Right to Self-Determination Under International Law: "Selfistans," Secession and the Great Powers' Rule*, was published by Routledge in 2012. Professor Sterio was the recipient of the Fulbright academic award for the spring 2013; pursuant to this award, she spent the last semester researching at Baku State University in Baku, Azerbaijan. Professor Sterio is Co-Chair of the

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Contributors

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Hodgkinson spent six years on active duty in the U.S. Navy's Judge Advocate General's (JAG) Corps, including assignments as an Appellate Clerk to the Navy and Marine Corps' Court of Criminal Appeals, as a Prosecutor and Foreign Criminal Jurisdiction Officer in Europe and Southwest Asia, and as an instructor at the Defense Institute of International Legal Studies where she led training teams to 25 countries on Rule of Law, Human Rights, Military Justice, and Law of War. She was recently selected for Commander in the Navy Reserve JAG Corps and is entitled to wear the Defense Meritorious Service Medal.

Eugene Kontorovich's research spans the fields of constitutional law, international law, and law and economics. He has authored a series of papers that extend the economic analysis of law to public law. Professor Kontorovich is also one of the leading experts on maritime piracy, universal jurisdiction, and international criminal law. He has advised lawyers in historic piracy trials around the world. He is working on a book, *Justice at Sea: Piracy and the Limits of International Criminal Law*, under contract with Harvard University Press. His scholarship has been relied on in numerous federal judicial opinions. Professor Kontorovich has also written and lectured extensively about the legal aspects of the Israel-Arab conflict. He went to college and law school at the University of Chicago, where he also taught for two years as a visiting professor. After law school, he clerked for Judge Richard Posner on the United States Court of Appeals for the Seventh Circuit. During the 2011–12 academic year, Professor Kontorovich was a resident member of the Institute for Advanced Study's School of Social Science at Princeton.

Frederick (Rick) Lorenz grew up in New York City and obtained his undergraduate and law degrees from Marquette University. He served in the U.S. Marine Corps for 27 years as a judge advocate, including a tour as an infantry company commander. He obtained an LLM (With Highest Honors) from George Washington University in Land Use Management and Control and practiced environmental/land use law between 1982 and 1991. In 1992 he joined the First Marine Expeditionary Force and was the senior legal advisor for the United Nations–authorized military intervention in Somalia, and he returned there as senior legal advisor for the UN evacuation in 1995. In 1996 he served in Bosnia as a legal advisor for the NATO implementation force and later was a Professor of Political Science at the National Defense University in Washington, D.C. In 2000 he served as a United Nations legal affairs officer in Kosovo, working in the UN Civil Administration. He has been a Visiting Professor of Law at the University of Bergen, Norway, and a Visiting Scholar at the Irish Centre for Human Rights in Galway, Ireland. He is currently a Senior Lecturer at the Jackson School of International Studies, University of Washington, teaching courses in international humanitarian law and water and security in the Middle East. He is also a Senior Fellow for the Public International Law and Policy Group, working in the Republic of Georgia, assisting the Georgian government in peace negotiations with the Republic of

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Abkhazia. In the summer of 2007 he was an election monitor in another self-proclaimed and disputed territory, the Republic of Nagorny Karabakh. In 2008 and 2009 he participated in a State Department program to provide legislative support in the unrecognized Republic of Somaliland.

Ved P. Nanda is the Evans University Professor and the Thompson G. Marsh Professor of Law at the University of Denver Sturm College of Law. In addition to his scholarly achievements, he is significantly involved in the global international law community. He is Past President of the World Jurist Association and now its Honorary President, former honorary Vice President of the ASIL and now its counselor, and a member of the advisory council of the United States Institute of Human Rights. He was formerly the United States Delegate to the World Federation of the United Nations Associations, Geneva, and Vice-Chair of its Executive Council, and he also served on the Board of Directors of the United Nations Association–USA. He also serves as an elected member of the American Law Institute and as a council member for the American Bar Association Section of International Law. In 2006 Professor Nanda was honored with a \$1 million founding gift from DU alumni Doug and Mary Scrivner to launch the Ved Nanda Center for International and Comparative Law. The Center began its programming in 2007, hosting programs for lawyers, students, and community participants as well as promoting scholarship in the field of international law. In February 2004, Professor Nanda was awarded the Gandhi, King, Ikeda Award for Community Peace Building from Soka Gakkai International and Morehouse College. In 1990 in Beijing, China, Professor Nanda was presented with the World Legal Scholar Award by the World Jurist Association. He was also the recipient of the United Nations Association Human Rights Award in 1997. He has received honorary doctorates from Soka University in Tokyo, Japan, and from Bundelkhand University in Jhansi, India. He is widely published in law journals and national magazines, has authored or co-authored 22 books in the various fields of international law and more than 180 chapters and major law review articles, and has been a Distinguished Visiting Professor and Scholar at a number of universities in the United States and abroad.

Kelly Paradis attended the George Washington University in Washington, D.C., where she studied criminal justice and international affairs. She earned her B.A. magna cum laude and is a member of Phi Beta Kappa. After graduation, she worked for the Honorable Ronald M. Gould at the United States Court of Appeals for the Ninth Circuit. She received her J.D. from the University of Washington School of Law and currently works as a law clerk for the Washington State Court of Appeals in Seattle.

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