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INTERNATIONAL HUMANITARIAN LAW

This clear and concise textbook provides an accessible and up-to-date examination of international humanitarian law. With the aid of detailed examples, extracts from relevant cases and useful discussion questions, students are expertly guided through the text. A recommended reading list is included in every chapter to support deeper engagement with the material. Emerging trends in theory and practice are also explored and examined, allowing readers to build on their knowledge and grapple with some of the biggest challenges facing the law of armed conflict in the twenty-first century.

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CONTENTS

Preface and acknowledgments	<i>page</i> xiii
Table of cases	xv
Tables of treaties, and Legislation	xvii
List of Abbreviations	xxi
Introduction	1
1 Historical Development of International Humanitarian Law	4
1. Introduction	4
2. Henri Dunant and the Battle of Solferino	5
3. The 1864 Geneva Convention	6
4. The Lieber Code 1863	7
5. The 1868 St Petersburg Declaration	8
6. The 1868 Additional Articles, 1874 Brussels Declaration, 1880 Oxford Manual	9
7. The 1899 and 1907 Hague Conventions	10
8. The 1949 Geneva Conventions	13
a. Common Article 3	15
9. The 1977 Additional Protocols	16
a. Additional Protocol I, wars of national liberation and guerrilla fighters	17
b. Additional Protocol II	17
10. Other IHL instruments	19
11. The development of international criminal law – the ICTY and ICTR, the ICC, and the hybrid and <i>ad hoc</i> courts and tribunals	19
a. The International Criminal Court	20
b. The <i>ad hoc</i> Criminal Tribunals for the former Yugoslavia and Rwanda	23
c. Hybrid and <i>ad hoc</i> courts and tribunals	25
12. Conclusion	27

2	The contemporary legal basis of international humanitarian law and its fundamental principles	29
1.	Introduction	29
2.	The law of armed conflict: purpose, concepts, scope, application	29
a.	The separation of <i>jus ad bellum</i> and <i>jus in bello</i>	30
b.	Hague law and Geneva law	32
c.	Terminology: wars vs. armed conflicts, law of armed conflict vs. international humanitarian law	32
d.	Scope and application of the law of armed conflict	34
3.	Sources of the law of armed conflict	36
a.	Treaties	37
i.	The treaty law distinction between international and non-international armed conflict	37
b.	Custom	38
c.	Other sources – soft law	40
4.	The fundamental principles of the law of armed conflict	41
a.	The principle of distinction	41
i.	The principle of discrimination (prohibition on indiscriminate attacks)	43
b.	Military necessity	43
c.	The principle of proportionality	44
d.	The prohibition on causing unnecessary suffering and superfluous injury	45
e.	The principle of neutrality	46
f.	The principle of humanity	47
5.	Conclusion	48
3	Types of armed conflicts	50
1.	Introduction	50
2.	International armed conflicts	51
a.	Common Article 2 armed conflicts	51
i.	“War” vs. “armed conflict”	51
ii.	What is an “armed conflict”?	52
iii.	Occupation	54
b.	Wars of national liberation	54
3.	Non-international armed conflicts	58
a.	Common Article 3 armed conflicts	61
i.	Intensity and organisation	63

	Contents
ii. Geographical field of application	66
iii. The shortcomings of Common Article 3	67
b. Additional Protocol II armed conflicts	67
i. Material field of application	68
4. Internationalised and “transnational” armed conflicts	72
a. Internationalised armed conflicts	73
i. Military intervention by a foreign State in a NIAC	73
A. <i>The conflict becomes an IAC, regardless of which side the foreign State supports</i>	73
B. <i>If the foreign State supports the territorial State, the conflict remains non-international</i>	74
C. <i>If the foreign State supports the armed group, the conflict between the foreign State and the territorial State is international; that between the armed group and the territorial State remains non-international</i>	75
D. <i>If the foreign State supports the armed group, the whole conflict becomes international</i>	75
ii. One of the parties is acting on behalf of a foreign State	76
A. <i>The Nicaragua test – effective control</i>	76
B. <i>The Tadić test – overall control</i>	77
b. “Transnational” armed conflicts	79
i. Conflict between State A and armed group X based in State A, fighting in State A	80
ii. Conflict between State A and armed group X based in State B, fighting in State A	80
iii. Conflict between State A and armed group X, fighting in A spills across border into State B	81
iv. Conflict between State A and armed group X based in neighbouring State B, fighting in B only	82
v. Conflict between State A and armed group X based in State C (and elsewhere), fighting in various States	83
5. Conclusion	85
4 Individual status in armed conflict – combatants, non-combatants, direct participation in hostilities and prisoners of war	87
1. Introduction	87
2. Combatant status – criteria, privileges and responsibilities	88
a. Early rules on combatant status – the US Civil War to the Geneva Conventions of 1949	89

3. The current law regarding combatant status	89
a. Members of the armed forces	90
b. Partisan and resistance fighters	91
i. Being commanded by a person responsible for his subordinates	91
ii. Having a fixed distinctive sign	92
iii. Carrying arms openly	92
iv. Obeying the laws of war	93
c. National liberation and guerrilla fighters under Protocol I	93
d. Levée en masse	95
e. Participants in non-international armed conflicts	96
4. Non-combatants entitled to POW status and treatment	97
5. Irregulars in hostilities not entitled to combatant status	98
a. Spies	98
b. Mercenaries	100
c. “Unlawful” combatants	102
d. Private military and security contractors	105
e. Civilians taking direct part in hostilities	109
6. Prisoner of war status	113
a. Determining prisoner of war status	113
b. Treatment of POWs	114
i. Rights of POWs	114
ii. Rules on conditions of captivity	116
iii. Rules on penal and disciplinary proceedings	117
iv. Obligations for detaining authorities regarding transmission of information, monitoring by Protecting Powers and the ICRC, and repatriation of prisoners of war	117
7. Conclusion	118
5 Protection of the wounded, sick and shipwrecked	120
1. Introduction	120
2. The origins of the protection of the <i>hors de combat</i> in armed conflict	120
3. The rules regarding respect for and care of the wounded, sick and shipwrecked	121
a. In international armed conflicts	121
b. In non-international armed conflicts	124
4. Provisions on the dead and missing	125

	Contents
5. Medical personnel and the protection of medical goods and objects, including hospitals, ambulances and hospital ships	128
a. Medical and religious personnel	128
b. Medical goods and objects, including hospitals, ambulances and hospital ships	129
6. The protective emblems: the Red Cross, Red Crescent and Red Crystal	132
a. Background to the adoption of the emblems: the Red Cross	132
b. The Red Crescent	134
c. The Red Shield of David	136
d. The Red Crystal	137
e. Substance of the international law on the distinctive emblems	138
7. Conclusion	139
6 The law of occupation and the protection of civilians	142
1. Introduction	142
2. General protections for civilians	142
3. The historical development and philosophical underpinnings of the modern law of occupation	144
4. Beginning of occupation	146
a. Protected persons	147
b. Administration of occupied territory	149
c. Rules on protected persons and persons deprived of their liberty	151
i. Protected persons	151
ii. Persons deprived of their liberty	154
d. End of occupation	155
e. Problems regarding long-term occupation	155
5. Rules on the treatment of civilians in non-international armed conflicts	159
6. Conclusion	161
7 Targeting	163
1. Introduction	163
2. The philosophical underpinnings of the law of targeting	164
3. The basic rule: Article 48 of Additional Protocol I	165
4. Military objects and objectives	166

a. “Objects” and “objectives”	167
b. Nature, location, purpose, use	168
i. Nature	168
ii. Location	168
iii. Purpose	168
iv. Use	169
c. Destruction, capture or neutralisation	169
d. Circumstances ruling at the time	170
e. Definite military advantage	171
5. Additional rules on targeting military objectives	172
a. Indiscriminate attacks	172
b. Proportionality	174
c. Precautions in attack and defence	175
i. Precautions in attack	175
ii. Precautions in defence	178
6. Specific rules on targeting certain types of objects	179
a. Cultural property	179
b. The environment	183
c. Medical facilities	185
d. Works and installations containing dangerous forces	185
e. Objects necessary for the survival of the civilian population	187
f. Civil defence, non-defended localities and demilitarised zones	188
7. Dual use objects – a new category in the law of targeting?	191
8. A note on the law of targeting in non-international armed conflicts	192
9. Conclusion	193
8 Means and Methods of Warfare	195
1. Introduction	195
2. The general rules – the prohibitions on causing unnecessary suffering and superfluous injury, and on indiscriminate means and methods	195
3. The obligation to assess the legality of new means and methods of warfare	199
4. Specifically prohibited weapons and restricted weapons	200
a. Explosive and dum-dum bullets	200
b. Mines and booby-traps	201
i. Booby-traps	202

	Contents
ii. Landmines	202
c. Incendiary weapons	205
d. Non-detectable fragments	205
e. Blinding laser weapons	206
f. Explosive remnants of war	207
g. Cluster munitions	207
h. Chemical weapons and poison	209
i. Biological and bacteriological weapons	210
5. Prohibited methods of warfare	211
a. Orders of “no quarter”	212
b. Perfidy	212
c. Siege warfare and starvation of civilians	214
d. Pillage	215
e. Other rules relating to methods of warfare	216
i. Belligerent reprisals	216
ii. Mercenaries	218
iii. Parachutists in distress	218
iv. Espionage	219
6. Means and methods of warfare of indeterminate or contested status	220
a. Depleted uranium	220
b. White phosphorus	221
c. Nuclear weapons	223
d. Cyber warfare	226
e. Targeted killing and drone warfare	229
7. Conclusion	234
9 Implementation, enforcement and accountability	235
1. Introduction	235
2. Common Article 1: the obligation to ensure respect	235
3. Measures to be taken in peacetime	237
a. Dissemination to the armed forces	238
b. Dissemination to civil society	239
c. Implementation into domestic legislation	239
4. Role of the protecting powers and the International Committee of the Red Cross	240
5. The International Humanitarian Fact Finding Commission	243
6. Accountability through international criminal law	244

a. Individual responsibility for violations of the laws of armed conflict	245
i. War crimes and grave breaches	245
ii. Violations of the law of armed conflict not amounting to grave breaches	247
iii. Crimes against humanity and genocide	247
b. Command responsibility	248
7. The International Criminal Court, the international tribunals, and the hybrid and internationalised courts	250
8. Reparations for violations of the law of armed conflict	252
9. The role of the United Nations and international and non-governmental organisations	253
10. Implementation, enforcement and accountability in non-international armed conflicts	256
a. What law applies?	256
b. To whom does the (NIAC) law apply?	258
c. Implementation, enforcement and accountability	262
i. Dissemination	262
ii. Special agreements	263
iii. Unilateral undertakings or commitments	263
iv. Accountability through international criminal law	264
11. Conclusion	265
10. Conclusions	267
Bibliography	269
Index	285

PREFACE AND ACKNOWLEDGMENTS

It has become something of a cliché in the general literature on international humanitarian law (IHL – also known as the law of armed conflict, or less frequently, the law of war¹) to quote Hersch Lauterpacht, who once noted that “if international law is at the vanishing point of law, the law of war is at the vanishing point of international law”.² To the novice observer, it would seem that there are no rules governing conduct in armed conflicts; that it is absurd to try and regulate the kinds of barbarity we traditionally associate with warfare; and that, even if there are laws of war, no one seems to be abiding by them.³

These charges, while compelling, are inaccurate. IHL is one of the oldest branches of international law, and a complex and diverse area of law, covering matters such as the treatment of civilians in times of armed conflict, permissible means and methods of waging such armed conflicts, instruction for occupying forces, rules on the protection of certain kinds of property, such as cultural property and the natural environment, and rules regarding implementation, enforcement and accountability. Research into international humanitarian law indicates that the rules are, for the most part, followed⁴ and that States and non-State actors alike are keenly aware of their obligations under IHL.⁵

Sadly, when the rules are broken or ignored, they often result in brutal and inhumane outcomes, as we have seen in recent years in Guantanamo Bay and Abu Ghraib, in the ISIS held territories of Syria and Iraq, in the genocide of Rwanda and the ethnic cleansing of the Former Yugoslavia. The laws governing conduct in

¹ The terms IHL, the law of armed conflict and international humanitarian law will be used interchangeably throughout this text.

² Hersch Lauterpacht, “The Problem of the Revision of the Law of War” (1952) 29 *BYBIL* 382.

³ E.g., the US Central Intelligence Agency (CIA) systematically tortured detainees under their control during their operations against al-Qaeda and Taliban forces; former US Vice President Dick Cheney has repeatedly stated that such conduct was acceptable, and that he was unconcerned that innocent persons may have been subject to torture (see Daniel Politi, “Dick Cheney on CIA Torture: ‘I’d Do It Again in a Minute’”, *Slate*, 14 December 2014, www.slate.com/blogs/the_slatest/2014/12/14/dick_cheney_on_cia_torture_i_d_do_it_a_gain_in_a_minute.html).

⁴ See research undertaken by James Morrow, “When Do States Follow the Laws of War?” (2007) 101 *American Political Science Review* 559; and (with Hyeran Jo) “Compliance with the Laws of War: Dataset and Coding Rules” (2006) 23 *Conflict Management and Peace Science* 91.

⁵ See, e.g., the lengths that US administrations have gone to in order to justify their activities as being in compliance with international law – for instance, President Barack Obama has repeatedly stated that the policy of targeted killings is lawful under IHL. (See remarks by the President at the National Defense University, 23 May 2013, www.whitehouse.gov/the-press-office/2013/05/23/remarks-president-national-defense-university.)

armed conflicts were designed to try and mitigate some of the horrors of warfare. It is unsurprising then that when those rules are violated, horrible outcomes eventuate.

However, part of the process of ensuring that those violations are addressed, and that people are held accountable for such outcomes in some way, is to educate society about the laws of armed conflict, to ensure that people are aware that there are rules that govern conduct in armed conflicts, and that when violations of the rules are brought to light, some public accounting for such acts takes place. This book is a part of that process, and contributes to the process of disseminating the law of armed conflict, and bringing knowledge about its content to society at large. This book looks at this complex and dynamic part of international law, outlining the relevant law, the historical context in which the law developed and emerged, and looks at future challenges to the law.

The authors of this book have many people to thank for helping get this book to publication. First, we must thank our editorial and production team at Cambridge University Press, including Marta Walkowiak, Finola O’Sullivan and Valerie Appleby, who helped shepherd this book in its various incarnations to the work it is today. We also must acknowledge and thank the reviewers of this work, whose thoughtful comments helped shaped and develop the text. Thanks must also go to our colleagues at the Sydney Law School at the University of Sydney, whose collegiality and friendship played no small part in helping us complete the work. Alison Pert is particularly grateful to Lorraine Walsh and Sarah Schwartz for their sterling editorial assistance, and above all to her co-author Emily Crawford for her extraordinary intellectual and personal generosity in all things.

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TABLE OF CASES

The International Court of Justice

Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, ICJ Rep. 2007, p. 43 78, 79

Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), (19 December 2005) ICJ Rep. 2005, p. 168 72

Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, ICJ Rep. 2004, p. 136 235, 255

Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion ICJ Rep. 1996, p. 66 32, 42, 45, 48, 85, 196, 198, 225, 228

Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States), Judgment, ICJ Rep. 1986, p. 14 52, 75–8, 235, 257

North Sea Continental Shelf, Judgment, ICJ Rep. 1969, p. 43 36

Nuclear Tests (Australia v. France) Judgment, ICJ Rep. 1974, p. 253 264

Nuclear Tests (New Zealand v. France) Judgment, ICJ Rep. 1974, p. 457 264

Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), (Judgment of 20 July 2012) ICJ Rep. 2012, p. 422 26

Reparation for Injuries Suffered in the Service of the United Nations (Advisory Opinion), (11 April 1949) ICJ Rep 1949, p. 174 261

The International Criminal Court

Prosecutor v. Bemba, ICC-01/05-01/08, Decision on the Confirmation of Charges, 15 June 2009 249, 250

Prosecutor v. Katanga, ICC-01/04-01/07, Judgment, 8 March 2014 216

Prosecutor v. Thomas Lubanga Dyilo, ICC-01/04-01/06, Decision on the Confirmation of Charges, 29 January 2007 64, 79

Prosecutor v. Thomas Lubanga Dyilo, ICC-01/04-01/06, Judgment, 14 March, 2012 23

Prosecutor v. William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang, ICC-01/09-01/11, Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute, 23 January 2012 265

The International Criminal Tribunal for Rwanda

Prosecutor v. Akayesu, ICTR 96-4-T, Judgment, 2 September 1998 25, 36, 251

Prosecutor v. Bisengimana, ICTR-00-60-T, Judgment, 13 April 2006 216

Prosecutor v. Nahimana, ICTR-99-52-T, Judgment, 3 December 2003 251

Prosecutor v. Nahimana, ICTR-99-52-A, Appeals Judgment, 28 November 2007 251

The International Criminal Tribunal for the Former Yugoslavia (ICTY)

Prosecutor v. Aleksovski, IT-95-14/1, Appeals Judgment, 24 March 2000 79

Prosecutor v. Blaškić, IT-95-14-T, Judgment, 3 March 2000 73, 74, 216

Prosecutor v. Blaškić, IT-95-14-A, Appeals Judgment, 29 July 2004 143

Prosecutor v. Boškoski and Tarčulovski, IT-04-82-T, Judgment, 10 July 2008 65, 70

Prosecutor v. Delalić et al., IT-96-21-T, Judgment, 16 November 1998 154, 216

Prosecutor v. Delalić et al, IT-96-21-A, Appeals Judgment, 20 February 2001 79

Prosecutor v. Furundžija, IT-95-17/1-T, Judgment, 10 December 1998 48

Prosecutor v. Hadžihasanović, Alagic and Kubura, IT-01-47-AR72, Decision on Interlocutory Appeal Challenging Jurisdiction in Relation to Command Responsibility, 16 July 2003 69

Prosecutor v. Hadžihasanović, IT-01-47-T, Judgment, 15 March 2006 216

Prosecutor v. Halilović, IT-01-48-T, Judgment, 16 November 2005 249

Prosecutor v. Haradinaj, Balaj and Brahimaj, IT-04-84-T, Judgment, 3 April 2008 64

Prosecutor v. Jelesić, IT-95-10-T, Judgment, 14 December 1999 216

Prosecutor v. Kordić and Čerkez, IT-95-14/2/T, Judgment, 26 February 2001 73, 79

Prosecutor v. Kordić and Čerkez, IT-95-14/2-A, Appeals Judgment, 17 December 2004 32, 216

Prosecutor v. Krnojelac, IT-97-25-A, Appeals Judgment, 17 September 2003 249

Prosecutor v. Kupreškić et al., IT-95-16-T, Judgment, 14 January 2000 48, 218, 236

<p>The International Criminal Tribunal for the Former Yugoslavia (ICTY) (cont.)</p> <p><i>Prosecutor v. Limaj, Bala and Musliu</i>, IT-03-66-T, Judgment, 30 November 2005 65</p> <p><i>Prosecutor v. Martić</i>, IT-95-11, Review of the Indictment under Rule 61, 8 March 1996 48</p> <p><i>Prosecutor v. Martić</i>, IT-95-11, Judgment, 12 June 2007 174, 216, 218</p> <p><i>Prosecutor v. Prlić et al.</i>, IT-04-74-T, Judgment, 29 May 2013 183</p> <p><i>Prosecutor v. Rajić</i>, IT-95-12-R61, Review of the Indictment Pursuant to Rule 61 of the Rules of Procedure and Evidence, 13 September 1996 73, 74, 147, 148</p> <p><i>Prosecutor v. Strugar</i>, IT-01-42-T, Judgment, 31 January 2005 183</p> <p><i>Prosecutor v. Strugar</i>, IT-01-42-A, Appeals Judgment, 17 July 2008 112, 113</p> <p><i>Prosecutor v. Dusko Tadić</i>, IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995 (“<i>Tadić Jurisdiction</i>”) 35, 231</p> <p><i>Prosecutor v. Dusko Tadić</i>, IT-94-1-T, Judgment 7 May 1997 (“<i>Tadić Trial Judgment</i>”) 64, 148</p> <p><i>Prosecutor v. Dusko Tadić</i>, IT-94-1-A, Appeals Judgment, 15 July 1999 (“<i>Tadić Appeal Judgment</i>”) 73, 143</p> <p>The Special Court for Sierra Leone</p> <p><i>Prosecutor v. Brima et al.</i>, SCSL-04-16-T, Judgment, 20 June 2007 216</p> <p><i>Prosecutor v. Fofana and Kondewa</i>, SCSL-04-14-T, Judgment, 2 August 2007 216</p> <p><i>Prosecutor v. Fofana and Kondewa</i>, SCSL-04-14-A, Appeal Judgment, 28 May 2008 32</p> <p>The European Court of Human Rights</p> <p><i>Al-Skeini and others v. United Kingdom</i>, App No. 55721/07, 7 July 2011 255</p> <p><i>Al-Jedda v. United Kingdom</i>, App No. 27021/08, 7 July 2011 255</p> <p>The Inter-American Commission on Human Rights</p> <p><i>Juan Carlos Abella v. Argentina</i>, Case 11.137, Report No. 55/97, Inter-Am. CHR, OEA/Ser.L/V/II.95 Doc. 7 rev. at 271 (1997) 255</p> <p>The Inter-American Court of Human Rights</p> <p><i>Bámaca-Velásquez v. Guatemala</i>, Series C No. 70 (2000), Judgment, 25 November 2000 255</p> <p>Domestic Case Law</p> <p>Israel</p> <p><i>Ajuri et al. v. IDF Commander in the West Bank et al.</i>, HCJ 7015/02, [2002] IsrLR 1 157</p>	<p><i>Anonymous v. Minister of Defence</i>, Crim FH 7048/97, 54(1) PD 721 159</p> <p><i>Beit Sourik Village Council v. The Government of Israel and the Commander of the IDF Forces in the West Bank</i>, HCJ 2056/04, 58(5) PD 807 158</p> <p><i>Christian Society for the Holy Places v. Minister of Defence</i> HCJ 337/71 (1971), 26(1) PD 574 156</p> <p><i>Military Prosecutor v. Omar Mahmud Kassem and Others</i>, 42 a470, 13 April 1969 96</p> <p><i>The Public Committee against Torture in Israel et al. v. The Government of Israel et al.</i>, HCJ 769/02, 13 December 2006 105, 110</p> <p><i>Salama et al. v. IDF Commander of Judea and Samaria et al.</i>, HCJ 5784/03, 57(6) PD 721, 33 (1) 471 154</p> <p><i>State of Israel v. Marwan Barghouti</i>, District Court of Tel Aviv and Jaffa, Criminal Case No. 092134/02, 12 December 2002 103</p> <p>The Netherlands</p> <p><i>Re Flesche</i>, Dutch Special Court of Cassation [1949] 16 AD 266 99</p> <p>United Kingdom</p> <p><i>Public Prosecutor v. Oie Hee Koi</i>, Judicial Committee of the Privy Council (UK), [1968] AC 829, 4 December 1967 113</p> <p><i>R (Abbasi and another) v. Secretary of State for Foreign and Commonwealth Affairs</i> [2002] EWCA Civ 159 104</p> <p>United States</p> <p><i>Al-Aulaqi v. Obama</i>, 727 F. Supp 2d 1, 9 (DDC 2010) 230</p> <p><i>Boumediene et al. v. Bush et al.</i>, 553 US 723 (2008) 104</p> <p><i>Ex parte Quirin</i>, 317 US 1 (1942) 102, 105</p> <p><i>Hamdan v. Rumsfeld</i>, 548 US 557 (2006) 66, 83, 104, 114</p> <p><i>Hamdi v. Rumsfeld</i>, 542 US 507 (2004) 104</p> <p><i>In re Territo</i>, 156 F.2d 142, 145 (9th Cir 1946) 113</p> <p><i>Rasul v. Bush</i>, 542 US 466 (2004) 104</p> <p><i>Rumsfeld v. Padilla</i>, 542 US 426 (2004) 104</p> <p><i>United States v. Oswald Pohl et al.</i>, US Military Tribunal, Subsequent Nuremburg V TWC 195 (3 November 1947) 126</p> <p><i>United States v. Otto Ohlendorf et al.</i> (“the <i>Einsatzgruppen</i> case”), US Military Tribunal Nuremburg, IV TWC 1 (9 April 1948) 91</p> <p><i>United States v. Von Leeb et al.</i> (“the <i>High Command</i> case”), US Military Tribunal Nuremburg, X-XI TWC 1 (27 October 1948) 249</p> <p><i>United States v. Wilhelm List et al.</i>, (“the <i>Hostage</i> case”), US Military Tribunal Nuremburg, IX TWC 757 (19 February 1948) 44, 88</p>
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TABLES OF TREATIES, LEGISLATION AND
OTHER INSTRUMENTS

Treaties

Declaration Respecting Maritime Law 1856	5	Hague V – Convention relative to the Rights and Duties of Neutral Powers and Persons in case of War on Land 1907	12
Convention for the Amelioration of the Condition of the Wounded in Armies in the Field 1864	6, 7, 11–14, 120, 121, 133–5, 268	Hague VI – Convention relative to the Legal Position of Enemy Merchant Ships at the Start of Hostilities 1907	12
Additional Articles relating to the Condition of the Wounded in War 1868	9	Hague VII – Convention relative to the Conversion of Merchant Ships into War Ships 1907	12
Declaration Renouncing the Use, in Time of War, of Explosive Projectiles under 400 Grammes Weight 1868 (St Petersburg Declaration)	8–10, 45, 171, 196, 200, 268	Hague VIII – Convention relative to the Laying of Automatic Submarine Contact Mines 1907	12
Hague I – Convention for the Pacific Settlement of International Disputes 1899	11	Hague IX – Convention concerning Bombardment by Naval Forces in Time of War 1907	12
Hague II – Convention with Respect to the Laws and Customs of War on Land 1899	11, 13, 19, 47, 51, 64, 97, 145, 238	Hague X – Convention for the Adaptation to Maritime War of the Principles of the Geneva Convention (of 6 July 1906) 1907	12, 121
Hague III – Convention for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention of August 22, 1864 (1899)	9, 11, 121	Hague XI – Convention relative to Restrictions with Regard to the Exercise of the Right of Capture in Naval War 1907	12
Hague IV, 1 – Declaration on the Launching of Projectiles and Explosives from Balloons 1899	11	Hague XII – Convention relative to the Creation of an International Prize Court 1907	12
Hague IV, 2 – Declaration on the Use of Projectiles the Object of Which is the Diffusion of Asphyxiating or Deleterious Gases 1899	11, 209	Hague XIII – Convention concerning the Rights and Duties of Neutral Powers in Naval War 1907	12, 46
Hague IV, 3 – Declaration on the Use of Bullets Which Expand or Flatten Easily in the Human Body 1899	11, 200	Hague XIV – Declaration prohibiting the Discharge of Projectiles and Explosives from Balloons 12	
Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field, 6 July 1906	13, 134	Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare 1925	14, 209, 210
Hague I – Convention for the Pacific Settlement of International Disputes 1907	12	Convention relative to the Treatment of Prisoners of War 1929	14
Hague II – Convention respecting the Limitation of the Employment of Force for Recovery of Contract Debts 1907	12	Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field 1929	14, 135
Hague III – Convention relative to the Opening of Hostilities 1907	12	Washington Treaty on the Protection of Artistic and Scientific Institutions and Historic Monuments (Roerich Pact) 1935	179, 180
Hague IV – Convention respecting the Laws and Customs of War on Land 1907	12, 13, 19, 20, 35, 44, 45, 69, 89, 46, 47, 97, 102, 145, 146, 149, 150, 152, 156, 169, 179, 196, 209, 212, 213, 216, 219, 252	Charter of the United Nations 1945 (UN)	52, 146, 254
		Agreement for the Prosecution and Punishment of Major War Criminals of the European Axis, and Charter of the International Military Tribunal 1945	21, 247

Treaties (cont.)	
Convention on the Prevention and Punishment of the Crime of Genocide 1948	248
Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field 1949	14, 16, 20, 33, 52, 61, 89, 105, 121–5, 127, 129–31, 138, 139, 152, 216, 217, 236–41, 243, 246, 260, 262
Geneva Convention (II) for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea 1949	14, 15, 20, 69, 89, 90, 105, 122–5, 128–30, 138, 139, 216, 217, 238–41, 243, 246, 262
Geneva Convention (III) Relative to the Treatment of Prisoners of War 1949	15, 17, 20, 35, 42, 47, 48, 66, 69, 88–92, 94, 95, 97, 98, 103, 105, 109, 114–16, 118, 127, 128, 152, 217, 238–43, 246, 262
Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War 1949	15, 16, 20, 34, 35, 54, 77, 105, 125, 127, 129, 139, 143, 144, 146–59, 169, 178, 214, 217, 238–43, 246, 262
Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict 1954	182
Protocol (to the Hague Convention 1954) for the Protection of Cultural Property in the Event of Armed Conflict 1954	180
Vienna Convention on the Law of Treaties 1969	36
Convention for the Elimination of Mercenarism in Africa 1972	100
Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction 1972	210
United Nations Convention on the Prohibition of Military or Any Other Use of Environmental Modification Techniques 1976	183, 184
Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts 1977	17
Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts 1977	18, 67
Convention on the Prohibition or Restriction on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or have Indiscriminate Effects 1980	46, 48, 184
Protocol I (to the Convention on the Prohibition or Restriction on the Use of Certain Conventional Weapons 1980) on Non-Detectable Fragments 1980	256
Protocol II (to the Convention on the Prohibition or Restriction on the Use of Certain Conventional Weapons 1980) prohibiting Mines, Booby-Traps and Other Devices 1980 (amended 1996)	201, 256
Protocol (III) on Prohibitions or Restrictions on the Use of Incendiary Weapons 1980	205, 256
International Convention against the Recruitment, Use, Financing and Training of Mercenaries 1989	101
Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction 1993	209, 257
Protocol IV (to the Convention on the Prohibition or Restriction on the Use of Certain Conventional Weapons 1980) on Blinding Laser Weapons 1995	206, 256
Ottawa Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction 1997	204, 256
Rome Statute of the International Criminal Court 1998	22, 23, 44, 124, 126, 139, 174, 181, 192, 196, 198, 201, 210–13, 215, 216, 246–8, 250–3, 265
Second Protocol (to the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict 1954) for the Protection of Cultural Property in the Event of Armed Conflict 1999	180, 256
Protocol V (to the Convention on the Prohibition or Restriction on the Use of Certain Conventional Weapons 1980) on Explosive Remnants of War 2003	207, 256
Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Adoption of an Additional Distinction Emblem (Protocol III) 2005	136
Cluster Munitions Convention 2008	208, 253
Arms Trade Treaty 2013	
Legislation	
<i>Australia</i>	
Geneva Conventions Act 1957 (Cth)	139, 240
<i>Israel</i>	
Detention of Unlawful Combatants Law, 2002, 1834 Sefer Hahukim [Laws of the State of Israel, Hebrew] 192	103, 159
<i>United States</i>	
Authorization for Use of Military Force Against Terrorists (Pub. L. 107–40, 115 Stat. 224)	

Military Commission Act of 2006 and 2009, 10 USC §§ 948a 103, 105	Basic Principles of the Legal Status of the Combatants Struggling Against Colonial and Alien Domination and Racist Regimes, UN General Assembly, UN Doc. A/9030, 12 December 1973
Declarations, Manuals and Other Soft Law Instruments	Charter and Judgment of the Nurnberg Tribunal, memorandum submitted by the Secretary- General to the International Law Commission, Lake Success, 1949, UN Doc. A/CN.4/5, UN Sales No. 1949 v. 7 (1949) 1
Charter of the International Military Tribunal for the Far East, 19 January 1946, 15 AD 356 21	Definition of Aggression, UN General Assembly, Resolution 3314, UN Doc. A/RES/3314, 14 December, 1974 22
Communication to the Swiss Federal Council from the Permanent Representative of Palestine to the United Nations dated 14 June 1989 56	Draft Code of Crimes against the Peace and Security of Mankind, UN General Assembly, UN Doc. 51/160, 16 December 1996 22
Draft Articles on the Effects of Armed Conflicts on Treaties with Commentaries, ILC, 2011 53	Historical Survey on the Question of International Criminal Jurisdiction, 1949, UN Doc. A/CN.4/ 7/Rev.1 1, 21
Draft Articles on Responsibility of States for Internationally Wrongful Acts, 2001 20, 237	Human Rights in Palestine and other Occupied Arab Territories: Report of the United Nations Fact-Finding Mission on the Gaza Conflict, Human Rights Council, UN Doc. A/HRC/12/48, 25 September 2009 (“Goldstone Report”) 177, 213
Hague Draft Rules of Aerial Warfare 1923 179, 200, 218	International Register of Cultural Property under Special Protection: Coordination of Implementation of Conventions Protecting the Cultural Heritage, UN Educational, Scientific and Cultural Organisation, UN Doc. WHC.94/ CONF.003/INF.12, 16 November 1994 181
Instructions for the Government of Armies of the US in the Field, promulgated as General Orders No. 100 (Lieber Code) 24 April 1863 7, 8, 10, 12, 20, 44, 89, 96, 145, 179, 196, 215	Letter dated 24 September 1990 to the UN Secretary-General, UN Doc. S/21815, 24 September 1990 212
Oxford Manual of the Laws of War on Land 1880 9, 89	Report of the Secretary-General Prepared Pursuant to General Assembly Resolution ES- 10/13, UN Doc. No A/ES-10/248, 24 November 2003 158
Project of an International Declaration concerning the Laws and Customs of War, Brussels Conference of 1874 89, 96, 200	Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, Martin Scheinin: addendum: mission to the United States of America, UN Human Rights Council, 22 November 2007, UN Doc. A/HRC/6/17/Add.3 104
Statute of the Extraordinary African Chambers within the courts of Senegal created to prosecute international crimes committed in Chad between 7 June 1982 and 1 December 1990, Human Rights Watch 26	
The Harvard Manual on International Law Applicable to Air and Missile Warfare 2009 41	
The Montreux Document on Pertinent International Legal Obligations and Good Practices for States related to Operations of Private Military and Security Companies during Armed Conflict 2008 41, 107–9	
The San Remo Manual on the International Law Applicable to Armed Conflicts at Sea 1994 41	
The Tallinn Manual on the International Law Applicable to Cyber Warfare 2013 41, 228, 229	
UN Documents	ICRC Documents
Agreement between the United Nations and the Royal Government of Cambodia concerning the Prosecution under Cambodian Law of Crimes committed during the Period of Democratic Kampuchea, 2003 26	Constitution of the International Federation of Red Cross and Red Crescent Societies of 1987 136
Alston, Philip, Study on Targeted Killings: Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, UN Doc. A/ HRC/14/24/Add.6, 28 May 2010 229, 231, 232	Draft Rules for the Limitation of the Dangers Incurred by the Civilian Population in Time of War 1956 16, 166, 201

ICRC Documents (cont.)	
Draft Additional Protocols to the Geneva Conventions of August 12, 1949: Commentary, 1973	197
Final Act of the Diplomatic Conference of Geneva, 1949	14
Final Act of the Diplomatic Conference of Geneva of 1974–1977, 1977	16
Final Record of the Diplomatic Conference of Geneva of 1949	31, 91, 137
Interpretive Guidance on the Notion of Direct Participation in Hostilities Under International Humanitarian Law 2008	41, 111, 112
Official Records of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, 16 vols. (Bern: Swiss Federal Political Department, 1978)	33, 55, 94, 95, 97, 100, 137, 168, 171, 184, 197, 199, 244
Report of the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, (Geneva: ICRC, 1971)	93, 123
Report on the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, 2 vols. (Geneva: ICRC, 1972)	93, 123
Report of the International Committee of the Red Cross on its Activities during the Second World War, vol. 1 (Geneva: ICRC, 1948)	89
Report on International Humanitarian Law and the Challenges of Contemporary Armed Conflict, 2007	160
Report on the International Conference held in Geneva on 26–29 October 1863 to Examine Ways of Remedying Shortcomings in the Medical Services of Armies in the Field (Geneva: Imprimerie Fick, 1863)	133
Report on the Work of the Conference of Government Experts for the Study of the Conventions for the Protection of War Victims, 14 – 26 April 1947, 1947	33
Report on the Work of the Preliminary Conference of National Red Cross Societies for the Study of the Conventions and of Various Problems	
	Relative to the Red Cross, 26 July – 3 August 1946, 1947
	33
	Resolutions of the Geneva International Conference. 26–29 October 1863
	6
	Report of the Specialists Appointed by the Secretary-General to Investigate Allegations by the Islamic Republic of Iran Concerning the Use of Chemical Weapons: Note by the Secretary-General, UN Security Council, UN Doc. S/16433, 26 March 1984
	209
	Resolution 50/46, Establishment of an International Criminal Court, United Nations General Assembly, UN Doc. A/RES/50/46, 11 December 1995
	22
	Resolution 827, Statute of the International Tribunal, UN Doc. S/RES/827, 25 May 1993
	23
	Situation of Detainees at Guantánamo Bay, UN Commission on Human Rights, 27 February 2006, E/CN.4/2006/120
	104
	Statement Concerning Unnecessary Suffering Presented by the Informal Working Group of Medical Experts, in Report on the Second Session of the Conference of Government Experts on the Use of Certain Conventional Weapons 1976
	197
	Statute of the International Law Commission, Adopted by the General Assembly in resolution 174 (II) of 21 November 1947, as amended by resolutions 485 (V) of 12 December 1950, 984 (X) of 3 December 1955, 985 (X) of 3 December 1955 and 36/39 of 18 November 1981
	1
	Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, UN Doc. S/25704 at 36, annex (1993) and S/25704/Add.1 (1993), adopted by Security Council on 25 May 1993, UN Doc. S/RES/827 (1993) (“ICTY Statute”)
	23, 24
	Statutes of the International Red Cross and Red Crescent Movement 1987
	136, 241
	Study into Customary International Humanitarian Law 2005
	39

LIST OF ABBREVIATIONS

AD	<i>Annual Digest</i>
AFL Rev	<i>Air Force Law Review</i>
AJIL	<i>American Journal of International Law</i>
Am J Public Health	<i>American Journal of Public Health</i>
Am U J Int'l L	<i>American University Journal of International Law</i>
Am U J Int'l L & Pol'y	<i>American University Journal of International Law and Policy</i>
API	Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, of 8 June 1977
APII	Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, of 8 June 1977
AP Commentary	Yves Sandoz, Christophe Swinarski and Bruno Zimmerman (eds.), <i>Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949</i> , (Geneva: ICRC/Martinus Nijhoff, 1987)
Ariz J Int'l & Comp L	<i>Arizona Journal of International and Comparative Law</i>
AULR	<i>American University Law Review</i>
AUILR	<i>American University International Law Review</i>
BYBIL	<i>British Yearbook of International Law</i>
Cal W Int'l LJ	<i>California Western International Law Journal</i>
Case W Res JIL	<i>Case Western Reserve Journal of International Law</i>
Chicago J Int'l L	<i>Chicago Journal of International Law</i>
CDDH	Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts (Geneva, 1974–7)
Chinese J Int'l L	<i>Chinese Journal of International Law</i>
Colum J Transt'l L	<i>Columbia Journal of Transnational Law</i>
Convention I	Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, of 12 August 1949
Convention II	Geneva Convention (II) for the Amelioration of the Condition of the Wounded, Sick in Armed Forces at Sea, of 12 August 1949

Convention III	Geneva Convention (III) Relative to the Treatment of Prisoners of War, of 12 August 1949
Convention IV	Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, of 12 August 1949
CTS	<i>Consolidated Treaty Series</i>
Denver J Int'l L & Pol'y	<i>Denver Journal of International Law and Policy</i>
Dick J Int'l L	<i>Dickinson Journal of International Law</i>
DoD	Department of Defense (US)
DPH	Direct Participation in Hostilities
DPHIG	Direct Participation in Hostilities Interpretive Guidance (ICRC)
EJIL	<i>European Journal of International Law</i>
ENMOD	United Nations Convention on the Prohibition of Military or Any Other Use of Environmental Modification Techniques 1976
EU	European Union
Fleck (ed.)	Dieter Fleck (ed.), <i>The Handbook of Humanitarian Law in Armed Conflicts</i> , 3rd edn (Oxford University Press, 2013)
Final Record	Final Record of the Diplomatic Conference of Geneva of 1949
For Aff	Foreign Affairs
Ga J Int'l & Comp L	<i>Georgia Journal of International and Comparative Law</i>
GC	Geneva Convention
GCI Commentary	Pictet (ed), <i>Commentary to Geneva Convention I for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field</i> , (Geneva: ICRC, 1952)
GCII Commentary	Pictet (ed), <i>Commentary to Geneva Convention II for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of the in Armed Forces at Sea</i> , (Geneva: ICRC, 1960)
GCIII Commentary	Pictet (ed), <i>Commentary to the Third Geneva Convention Relative to the Treatment of Prisoners of War</i> , (Geneva: ICRC, 1960)
GCIV Commentary	Pictet (ed), <i>Commentary to Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War</i> , (Geneva: ICRC, 1958)
Harv Int'l L J	<i>Harvard International Law Journal</i>
HLR	<i>Harvard Law Review</i>
Harv Nat Sec J	<i>Harvard National Security Journal</i>

HR/Hague Regs	Regulations concerning the Laws and Customs of War on Land, Annex to Convention (IV) Respecting the Laws and Customs of War on Land, of 18 October 1907
IAC	International Armed Conflict
ICC	International Criminal Court
ICJ	International Court of Justice
ICJ Rep.	International Court of Justice, Reports of Judgments
ICLQ	<i>International and Comparative Law Quarterly</i>
ICRC	International Committee of the Red Cross
ICRC CIHL Study	Jean-Marie Henckaerts and Louise Doswald-Beck (eds.), <i>International Committee of the Red Cross: Customary International Humanitarian Law, Volume I: Rules, Volume 2: Practice</i> (in two parts), (Cambridge University Press, 2005)
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia
IHL	International Humanitarian Law
IJIL	<i>Indian Journal of International Law</i>
ILA	International Law Association
ILC	International Law Commission
IMT	International Military Tribunal (Nuremberg)
IRRC	<i>International Review of the Red Cross</i>
ISAF	International Security Assistance Force (in Afghanistan)
IYBHR	<i>Israeli Yearbook of Human Rights</i>
J Conf & Sec L	<i>Journal of Conflict and Security Law</i>
JICJ	<i>Journal of International Criminal Justice</i>
Lieber Code	Instructions for the Government of Armies of the United States in the Field, Prepared By Francis Lieber, Promulgated as General Orders No. 100 by President Lincoln, 24 April 1863
LJIL	<i>Leiden Journal of International Law</i>
LNTS	<i>League of Nations Treaty Series</i>
LOIAC	Law of International Armed Conflict
Melb U L R	<i>Melbourne University Law Review</i>
Mich J Int'l L	<i>Michigan Journal of International Law</i>
Mil L R	<i>Military Law Review</i>
MJIL	<i>Melbourne Journal of International Law</i>
Montreux Document	The Montreux Document on Pertinent International Legal Obligations and Good Practices for States related to Operations of Private Military and Security Companies during Armed Conflict 2008

Neth YB Int'l L	<i>Netherlands Yearbook of International Law</i>
New Rules	Michael Bothe, Karl Joseph Partsch and Waldemar Solf (eds.), <i>New Rules for Victims of Armed Conflicts: Commentary on the Two 1977 Protocols Additional to the Geneva Conventions of 1949</i> , Martinus Nijhoff, The Hague/Boston/London, 1982
NIAC	Non-International Armed Conflict
Nordic J Int' L	Nordic Journal of International Law
NYUJ Int' Law & Pol	New York University Journal of International Law and Policy
Official Records	Official Records of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts Geneva 1974-1977
Pal YB Int'l Law	Palestine Yearbook of International Law
Penn St Int'l L Rev	Pennsylvania State International Law Review
PD	Piskei Din
PMSC	Private Military and Security Contractor
POW	Prisoner of War
Protocol I	Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, of 8 June 1977
Protocol II	Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, of 8 June 1977
RCADI	Recueil des Cours de l'Academie de Droit International ("Hague Receuil")
RDMDG	Revue de Droit Militaire et de Droit de la Guerre
Res.	Resolution
Rome Statute	Rome Statute of the International Criminal Court
Sassòli, Bouvier and Quintin	Marco Sassòli, Antoine Bouvier and Anne Quintin (eds), <i>How Does Law Protect in War? Cases, Documents and Teaching Materials</i> , 3rd edn, (Geneva: ICRC, 2011)
Schindler and Toman	Dietrich Schindler and Jiri Toman (eds.), <i>The Laws of Armed Conflicts: A Collection of Conventions, Resolutions and Other Documents</i> , 4th edn, (Leiden: Martinus Nijhoff, 2004)
Stanford LPR	Stanford Law and Policy Review
Tallinn Manual	Michael Schmitt (ed.), <i>The Tallinn Manual on the International Law Applicable to Cyber Warfare</i> , Cambridge University Press, New York, 2013

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Frontmatter
[More information](#)

TWC	Trials of War Criminals before the Nuremberg Military Tribunals
UC Davis LR	University of California Davis Law Review
UCLA L Rev	University of California Law Review
UN	United Nations
UNGA	United Nations General Assembly
UN SC	United Nations Security Council
UNTS	United Nations Treaty Series
U Rich L Rev	University of Richmond Law Review
Va J Int'l L	Virginia Journal of International Law
Vand J Transnat'l L	Vandenberg Journal of Transnational Law
YBIHL	Yearbook of International Humanitarian Law