

## Brief contents

<i>Preface to the Fourth Edition</i>	<i>page</i> xv
<i>Table of International Cases</i>	xvii
<i>Table of National Cases</i>	liv
<i>List of Abbreviations</i>	lxi
<i>List of Abbreviations of Book Titles</i>	lxv
<b>Part I Introduction</b>	1
1 Introduction: What is International Criminal Law?	3
2 The Aims, Objectives and Justifications of International Criminal Law	28
<b>Part II Prosecutions in National Courts</b>	47
3 Jurisdiction	49
4 National Prosecutions of International Crimes	69
5 State Cooperation with Respect to National Proceedings	89
<b>Part III International Prosecution</b>	113
6 The History of International Criminal Prosecutions: Nuremberg and Tokyo	115
7 The Ad Hoc International Criminal Tribunals	127
8 The International Criminal Court	144
9 Other Hybrid and Special Courts	173
<b>Part IV Substantive Law of International Crimes</b>	203
10 Genocide	205
11 Crimes Against Humanity	227
12 War Crimes	259
13 Aggression	297
	vii

viii	<i>Brief contents</i>	
14	Transnational Crimes, Terrorism and Torture	319
15	General Principles of Liability	341
16	Defences/Grounds for Excluding Criminal Responsibility	380
	<b>Part V International Criminal Procedure and Sentencing</b>	403
17	International Criminal Procedure	405
18	Victims in the International Criminal Process	445
19	Punishment and Sentencing	465
	<b>Part VI Relationship Between National and International Systems</b>	481
20	State Cooperation with the International Courts and Tribunals	483
21	Immunities	506
22	Alternatives and Complements to Criminal Prosecution	532
23	The Future of International Criminal Law	550
	<i>Index</i>	560

## Contents

<i>Preface to the Fourth Edition</i>	xv
<i>Table of International Cases</i>	xvii
<i>Table of National Cases</i>	liv
<i>List of Abbreviations</i>	lxi
<i>List of Abbreviations of Book Titles</i>	lxv
<b>Part I Introduction</b>	1
1 Introduction: What is International Criminal Law?	3
1.1 Meaning of international criminal law	3
1.2 Other concepts of international criminal law	5
1.3 Sources of international criminal law	8
1.4 International criminal law and other areas of law	13
1.5 A body of criminal law	17
1.6 International criminal law and philosophy	22
Further Reading	26
2 The Aims, Objectives and Justifications of International Criminal Law	28
2.1 Introduction	28
2.2 What international criminal justice is for	30
2.3 Broader goals	38
2.4 Other critiques of criminal accountability	43
Further Reading	45
<b>Part II Prosecutions in National Courts</b>	47
3 Jurisdiction	49
3.1 Introduction	49
3.2 Forms of jurisdiction	49
3.3 Conceptual matters	51
3.4 ‘Traditional’ heads of jurisdiction	52
3.5 Universal jurisdiction	56
Further Reading	68
	ix

x	<i>Contents</i>	
4	National Prosecutions of International Crimes	69
	4.1 Introduction	69
	4.2 National prosecutions	69
	4.3 State obligations to prosecute or extradite	74
	4.4 Domestic criminal law and criminal jurisdiction	78
	4.5 Statutory limitations	82
	4.6 Non-retroactivity principle	84
	4.7 <i>Ne bis in idem</i> or double jeopardy	85
	4.8 Practical obstacles to national prosecutions	87
	Further Reading	88
5	State Cooperation with Respect to National Proceedings	89
	5.1 Introduction	89
	5.2 International agreements and other bases of cooperation	90
	5.3 Some basic features	92
	5.4 Extradition	98
	5.5 Mutual legal assistance	107
	5.6 Transfer of proceedings	109
	5.7 Enforcement of penalties	110
	Further Reading	110
	<b>Part III International Prosecution</b>	113
6	The History of International Criminal Prosecutions: Nuremberg and Tokyo	115
	6.1 Introduction	115
	6.2 Commission on the responsibility of the authors of the war	115
	6.3 Nuremberg International Military Tribunal	116
	6.4 Tokyo International Military Tribunal	120
	6.5 Control Council Law No. 10 trials and military commissions in the Pacific sphere	125
	Further Reading	125
7	The Ad Hoc International Criminal Tribunals	127
	7.1 Introduction	127
	7.2 International Criminal Tribunal for the former Yugoslavia	127
	7.3 International Criminal Tribunal for Rwanda	137
	Further Reading	142
8	The International Criminal Court	144
	8.1 Introduction	144
	8.2 Creation of the ICC	144
	8.3 Structure and composition of the ICC	146
	8.4 Crimes within the jurisdiction of the ICC	147

	<i>Contents</i>	xi
8.5	Jurisdiction	148
8.6	How the Court works: an overview	151
8.7	Complementarity	155
8.8	Gravity	161
8.9	Interests of justice	162
8.10	Cooperation	163
8.11	Opposition to the ICC	164
8.12	Appraisal	169
	Further Reading	171
9	Other Hybrid and Special Courts	173
9.1	Introduction	173
9.2	Courts established by agreement between a State and an international organization or between States	176
9.3	Courts established by international administration	188
9.4	Courts established by a State with international support	193
9.5	Relationship with the ICC	198
9.6	Concluding remarks	199
	Further Reading	201
	<b>Part IV Substantive Law of International Crimes</b>	<b>203</b>
10	Genocide	205
10.1	Introduction	205
10.2	Protected groups	210
10.3	Material elements	214
10.4	Mental elements	219
10.5	Other modes of participation	226
	Further Reading	226
11	Crimes Against Humanity	227
11.1	Introduction	227
11.2	Common elements (contextual threshold)	231
11.3	Prohibited acts	242
	Further Reading	258
12	War Crimes	259
12.1	Introduction	259
12.2	Common issues	269
12.3	Specific offences	278
	Further Reading	296
13	Aggression	297
13.1	Introduction	297
13.2	Material elements	303

xii	<i>Contents</i>	
	13.3 Mental elements	311
	13.4 Prosecution of aggression in the ICC	312
	Further Reading	317
14	Transnational Crimes, Terrorism and Torture	319
	14.1 Introduction	319
	14.2 Terrorism	322
	14.3 Torture	334
	Further Reading	339
15	General Principles of Liability	341
	15.1 Introduction	341
	15.2 Perpetration/commission	342
	15.3 Aiding and abetting	355
	15.4 Ordering, instigating, soliciting, inducing and inciting	359
	15.5 Planning, preparation, attempt and conspiracy	363
	15.6 Mental elements	365
	15.7 Command/superior responsibility	368
	Further Reading	379
16	Defences/Grounds for Excluding Criminal Responsibility	380
	16.1 Introduction	380
	16.2 ICC Statute and defences	382
	16.3 Mental incapacity	383
	16.4 Intoxication	384
	16.5 Self-defence, defence of others and of property	386
	16.6 Duress and necessity	389
	16.7 Mistake of fact and law	391
	16.8 Superior orders	393
	16.9 Other defences	398
	Further Reading	400
	<b>Part V International Criminal Procedure and Sentencing</b>	<b>403</b>
17	International Criminal Procedure	405
	17.1 General issues	405
	17.2 Actors	410
	17.3 Rights	415
	17.4 Jurisdiction and admissibility procedures	420
	17.5 Investigation	421
	17.6 Coercive measures	424
	17.7 Prosecution	426
	17.8 Pre-Trial Process	429
	17.9 Evidentiary rules	433

<i>Contents</i>		xiii
17.10	Guilty plea and admission of guilt	435
17.11	Trial stage	436
17.12	Appeals and review	438
17.13	Offences against the administration of justice	441
17.14	Concluding remarks	441
	Further Reading	443
18	Victims in the International Criminal Process	445
18.1	Introduction	445
18.2	Victims and international criminal justice	446
18.3	Definition of victims	447
18.4	Protection of victims and witnesses	448
18.5	Victim participation at the ICC	451
18.6	Reparations to victims	459
18.7	An assessment	461
	Further Reading	463
19	Punishment and Sentencing	465
19.1	International penal regime	465
19.2	Purposes of punishment	467
19.3	Sentencing practice	469
19.4	Sentencing procedures	475
19.5	Pardon, early release and review of sentence	476
19.6	Enforcement	477
	Further Reading	478
	<b>Part VI Relationship Between National and International Systems</b>	<b>481</b>
20	State Cooperation with the International Courts and Tribunals	483
20.1	Nature of the cooperation regimes	483
20.2	Obligation to cooperate	485
20.3	Non-States Parties, international organizations and other entities	489
20.4	Authority to seek cooperation and rights of parties	492
20.5	Arrest and surrender	492
20.6	Other forms of legal assistance	495
20.7	Domestic implementation	499
20.8	Non-compliance and enforcement	501
20.9	Cooperation and complementarity	502
20.10	Concluding remarks	503
	Further Reading	504
21	Immunities	506
21.1	Introduction	506
21.2	Functional immunity and its limits	512

xiv	<i>Contents</i>	
	21.3 Personal immunity: no exception based on the crimes alleged	517
	21.4 Personal immunity: inroads in international courts	520
	21.5 Conclusion	530
	Further Reading	530
22	Alternatives and Complements to Criminal Prosecution	532
	22.1 Introduction	532
	22.2 Amnesties	534
	22.3 Truth commissions	542
	22.4 Lustration	546
	22.5 Reparations and civil claims	547
	22.6 Local justice mechanisms	548
	Further Reading	549
23	The Future of International Criminal Law	550
	23.1 Introduction	550
	23.2 International courts and tribunals	550
	23.3 National prosecutions of international crimes	553
	23.4 Engraining a commitment to accountability	554
	23.5 Evolution of substantive international criminal law	556
	23.6 The path forward (or back?)	557
	<i>Index</i>	560