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Foreword

This study is a revised and translated version of my doctoral thesis, which was approved by the University of Tokyo in 2008. The original Japanese version has been published as *Ihō na Meirei no Jikkō to Kokusaikeijisekinin (The Execution of Illegal Orders and International Criminal Responsibility)* (Tokyo: Yūshindō Kōbunsha, 2010). The views expressed in this study are my own and do not necessarily represent those of the Japanese government.

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September 2010 Hiromi Satō

Contents

Chapter 1
Introduction

Abstract The idea of prosecuting individual state officials directly under international law for their international illegal acts has been a matter of interest in the international society, especially since the Nuremberg Trial was held after World War II. One of the major principles of international criminal law presented by the Trial – the 'Nuremberg Principle' on the superior orders defense – denied immunity on the ground of superior orders in serious international crimes such as war crimes and laid down substantial grounds for the prosecution of state officials. However, detailed discussions on the problem of the superior orders defense have, in fact, long been conflicting. This study aims to describe the whole picture of the conflict of views and examine its implication for international rule-making with regard to international criminal law as well as for the development of international law in general.

1.1 The Subject of the Study

The development of the notion of individual criminal responsibility in international law has reflected the increased intervention of international law into domestic law with respect to the control of human behavior. After World War II, the notion of international common interest was embodied in some international instruments, and international law began to oblige states to criminalize certain acts under the respective national laws. This legal framework was first introduced for the problems of war crimes and genocide.

Before the Trial of the Major War Criminals before the International Military Tribunal (Nuremberg Trial), international law did not generally oblige states to punish war criminals. Some international conventions adopted at the beginning of the twentieth century made it obligatory for state parties to enact the national criminal law to control the violations of the conventions. For example, Article 21 of the *Hague Convention of 1907 (X) for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention* provided as follows:

> The signatory Powers likewise undertake to enact or to propose to their legislatures, if their criminal laws are inadequate, the measures necessary for checking in time of war individual acts of pillage and ill-treatment in respect to the sick and wounded in the fleet, as well as for

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> punishing, as an unjustifiable adoption of naval or military marks, the unauthorized use of the distinctive marks mentioned in Article 5 by vessels not protected by the present Convention.

Moreover, Article 29 of the *Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field* of 1929 read as follows:

> The Governments of the High Contracting Parties shall also propose to their legislatures should their penal laws be inadequate, the necessary measures for the repression in time of war of any act contrary to the provisions of the present Convention.[1]

These conventions were confined to regulating the violations of specific international instruments. They did not deal with war crimes in general. Some contemporary academics insisted on an obligation of belligerent parties to punish war criminals of hostile countries,[2] whereas others did not approve of such punishment.[3] In addition, most of the academic arguments that supported the punishment of the war criminals of hostile countries understood this as the 'right' of the belligerent parties.[4] This is why it has often been pointed out that the regulation of war criminals is the same as that of piracy.[5]

However, after the Nuremberg Trial, the principle of universality was introduced through the adoption of the Geneva Conventions of 1949, which oblige state parties to punish war crimes in general under the respective national laws. The trials and punishments for certain war crimes have since been obligated by international law.

On the other hand, immediately after World War II, the Nuremberg Trial realized the international prosecution of war crimes without the mediation of national laws. Further, toward the end of the twentieth century, the United Nations Security Council set up 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* (ICTY) and the *International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and*

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[1]The quoted provision succeeded Article 28 of the *Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field* of 1906.

[2]See, for instance, the Oxford Manual which was adopted by the Institute of International Law in 1880 read '[i]f any of the foregoing rules be violated, the offending parties should be punished, after a judicial hearing, by the belligerent in whose hands they are (J. Scott, *Resolutions of the Institute of International Law* (New York: Oxford University Press, 1916), 41)'.

[3]For instance, E. Colby, 'War Crimes and Their Punishment', *Minnesota Law Review* 8 (1923): 44–5.

[4]For instance, L. Oppenheim, *International Law,* 3rd ed. by R. Roxburgh, vol. 2, *War and Neutrality* (London: Longmans, 1921), 342, note 1; L. Oppenheim, *International Law,* 4th ed. by A. McNair, vol. 2*, Disputes, War and Neutrality* (London: Longman, Green, 1926), 409, note 1 (the following editions expressed the same view) ; H. Lauterpacht, 'The Law of Nations and the Punishment of War Crimes', *British Yearbook of International Law* 21 (1944): 61–2.

[5]The arguments which pointed out the resemblance between war crimes and piracy include W. Cowles, 'Universality of Jurisdiction over War Crimes', *California Law Review* 33 (1945): 188–203; G. Schwarzenberger, *International Law and Totalitarian Lawlessness* (London: Cape, 1943), 59.

Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, Between 1 January 1994 and 31 December 1994 (ICTR). The activities of these tribunals have introduced a new form of international criminal prosecution under the name of the international society, although various conditions need to be met in order to realize criminal trials before international tribunals.

As international law extended its control to the procedural aspects of national laws, it also gradually laid down clear definitions of international crimes together with the principles of criminal law to be applied at international trials. As stated above, the international conventions adopted before World War II confined themselves to dealing with violations of respective instruments. They neither aimed at formulating a general definition of war crimes[6] nor did they stipulate the general principles of criminal law to be applied. States were required to apply the national criminal laws of their respective countries or to provide for special national laws stipulating specific definitions of war crimes as well as general principles of criminal law to be applied at war crime trials. Some commentators attached great importance to this point and regarded war crimes as 'national crimes'.[7]

In these circumstances, the *Charter of the International Military Tribunal* (Nuremberg Charter) and the judgment of the Nuremberg Trial presented the definitions for relevant crimes and principles of criminal law to be applied at the trial. These rules later gained considerable support and were formulated as the Nürnberg Principles by the United Nations International Law Commission (ILC). The characteristics of the international rule-making process drastically changed after the Nuremberg Trial.

The notion of individual criminal responsibility in international law has special significance when the criminal acts in question relate to state acts as in the case of war crimes. In such a case, the prosecution of individual criminal acts introduces a new form of controlling the acts of sovereign states by international law.

In traditional theories and practice of international law, violations of international law by states basically led to collective responsibility. The responsibility of individual state officials who committed international illegal acts was generally absorbed into collective state responsibility.

However, the Nuremberg Charter and other international instruments adopted since then, such as the *Convention on the Prevention and Suppression of the Crime of Genocide* (Genocide Convention) and the *International Convention on the Suppression and Punishment of the Crime of Apartheid,* provide for some special measures on serious violations of the laws of war as well as crimes against humanity. They clearly stipulate that even if these illegal acts were committed as

[6]See the Hague Convention of 1907 (X) and the Geneva Convention of 1929 quoted above.

[7]G. Manner, 'The Legal Nature and Punishment of Criminal Acts of Violence Contrary to the Laws of War', *American Journal of International Law* 37 (1943): 407–410. Garner also emphasized that violations of international law were punished as national crimes (J. Garner, *International Law and the World War*, vol. 2 (London: Longmans, Green and co., 1920), 472–5).

state acts, the very persons who carried out the acts should be held directly responsible under international law. Thus, with respect to international illegal acts of high international concern, individual criminal responsibility can be dealt with at the international level along with the collective state responsibility. It can be said that the regulation of state acts has been much strengthened at least theoretically.

However, the notion of individual criminal responsibility of state officials under international law has faced with serious obstacles. In particular, the process of attributing international obligations directly to individual state officials faced considerable resistance in legal theory. This resistance was based on the theory of the 'impunity of state acts' and the absolute character of military discipline.

In a substantive aspect of international law, such resistance came in the form of the theory of sovereign immunity and an assertion of automatic immunity under the defense of superior orders. The theory of sovereign immunity implied that the official acts of a sovereign state should not result in a problem of individual responsibility under international law. The defense of superior orders was often deemed as unconditionally immunizing persons who committed illegal acts under the orders of a government or other superiors. From the viewpoint of the effective control of war crimes, a negation of these theories or assertion was indispensable.

Bernard Röling highly evaluated the judgment of the Nuremberg Trial in light of these problems of international law, especially that of the defense of superior orders. Röling, who served as a judge at the Tokyo Trial, supported the Nuremberg judgment as having shown the superiority of international law over national legal orders.[8] He emphasized, among other things, that the Nuremberg Tribunal stated that 'the very essence of the Charter is that individuals have international duties which transcend the national obligations of obedience imposed by the individual State'.[9]

Robert Jackson, who participated in the drafting of the Nuremberg Charter in his capacity as the representative of the United States and who later served as a prosecution counsel at the Nuremberg Trial, expressed a similar view. Jackson evaluated the rejection of the superior orders defense by the Charter, as well as the principle of individual responsibility, that of conspiracy, and prohibition of the plea of 'acts of state', as contributing to the legal control of wars. He stated:

> It is quite evident that the law of the charter pierces national sovereignty and presupposes that statesmen of the several states have a responsibility for international peace and order, as well as responsibilities to their own states. It would be idle to deny that this concept carries far-reaching implications.[10]

[8]B. Röling, 'Criminal Responsibility for Violations of the Laws of War', *Revue belge de droit international* 12 (1976): 20.

[9]Ibid.

[10]*Report of Robert H. Jackson, United States Representative to the International Conference on Military Trials: London, 1945* (Washington, DC: GPO, 1949) [hereinafter, *Jackson Report*], ix.

The idea that international law directly regulates the state acts of individuals should be deemed significant as showing the development of the international legal system. The idea implies that individual state officials should be obliged by international law bypassing national legal orders and bear sanctions under international law in case of its violations. However, an expression of this notion in international legal instruments could not be realized without obstacles. As already mentioned, the traditional international law absorbed the individual responsibility of state officials into collective state responsibility. A question of individual criminal responsibility had been dealt with by the respective national laws. It was thus natural that states hesitated to regard individuals as independent actors in criminal matters under international law. Concurrent debates on the superior orders defense can be said to have straightforwardly reflected this hesitation.

Article 8 of the Nuremberg Charter provided on the superior orders defense as follows:

> The fact that the Defendant acted pursuant to order of his Government or of a superior shall not free him from responsibility, but may be considered in mitigation of punishment if the Tribunal determines that justice so requires.[11]

This provision refused immunity on the ground of superior orders and bore an effect to broaden the possibility of punishing war crimes. The provision led to lively debates during the trials held under the Charter. After the Nuremberg Trial, the rule of Article 8 came to be widely supported and was consolidated into one of the Nürnberg Principles by the ILC. Nonetheless, the problem of the superior orders defense cannot be said to have been thoroughly concluded in the subsequent international rule-making processes.

Since the Nuremberg Trial, the problem of the superior orders defense has always been a cause of an imbroglio at the drafting of the Genocide Convention, the Geneva Conventions of 1949, and the *Protocol Additional to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I)* (Additional Protocol I). The complications aroused suspicion on the very nature of the 'principle' of the superior orders defense. The notion of international criminal responsibility of state officials has been widely considered at the international level after the Nuremberg Trial. However, the history of international rule-making up to the present even implies that certain counteractions against this idea do exist.

Academic arguments have also been conflicting. First, there have been diverse interpretations of the 'Nuremberg Principle' with regard to the superior orders defense, and second, the understanding of the present legal situation on this topic is also varied.

Some commentators interpret the 'Nuremberg Principle' as having opposed the superior orders defense, while some regard this opposition only for major war

[11]Trial of the Major War Criminals before the International Military Tribunal, (Nuremberg, 1947) [hereinafter, IMT], vol. 1, 12.

criminals, that is, for senior state officials. On the contrary, others deem the 'principle' as having conditionally recognized the superior orders defense. Different views have been associated with various understanding of the present situation of the problem, which eventually leads to a wide range of evaluations of the 'Nuremberg Principle'.

What is the 'Nuremberg Principle' with regard to the superior orders defense? Can it be said to have been established as a 'principle'? If there were any problems with the 'Nuremberg Principle' on the said defense, what kind of influence did they have on the subsequent discussions on this topic?

Bearing these questions in mind, this study seeks to reevaluate the whole picture of the problem of the superior orders defense. The first theme of this study is to establish a clear structure for discussion on the superior orders defense and to confirm its present situation. The second theme is to examine what kind of significance the discussions on the superior orders defense since the Nuremberg Trial have had on the development of international law. Such an examination would lead to certain implications with regard to an ideal method of international rule-making in the future.

1.2 Background of the Study

In the 1990s, the United Nations Security Council set up two ad hoc international criminal tribunals through its resolutions. At the beginning of the twenty-first century, the International Criminal Court (ICC), established on the basis of a multilateral convention, commenced operations. At the national level, the application of the notions of international law, such as crimes against humanity and the universality principle, for the prosecution of former heads of states has drawn much attention lately. Major examples are the trials of Nazi war criminals in the 1980s and 1990s[12] and the prosecution of Pinochet.[13] The construction of legal systems on individual criminal responsibility under international law has been accelerated after a period of stagnation for half a century.

However, the introduction of international rules on criminal matters is generally accompanied by many problems in the international society, which is grounded in horizontal structure among sovereign states. Criminal prosecution at international tribunals has been very limited. The Security Council has thus far established only two international tribunals. The application of international criminal law at national

[12]See M. Lippman, 'The Pursuit of Nazi War Criminals in the United States and in Other Anglo-American Legal Systems', *California Western International Law Journal* 29 (1998): 1–100.

[13]With regard to the *Pinochet* case, see, for instance, R. Wedgwood, 'International Criminal Law and Augusto Pinochet', *Virginia Journal of International Law* 40 (2000): 829–47; N. Arriaza, 'The Pinochet Precedent and Universal Jurisdiction', *New England Law Review* 35 (2001): 311–19.

courts has also been limited and has often been arbitrary.[14] Furthermore, negotiations with state leaders accused of international crimes might arguably be key to the peaceful settlement of disputes at least in the short run. In such a case, there is even a possibility that prosecution of such state leaders would obstruct the settlement of disputes.[15]

On the other hand, prosecution under international law does not necessarily exclude other methods of dispute settlement such as negotiations, truth and reconciliation commissions, and civil compensation. Relevant practice has shown that amnesty for individuals responsible for serious human rights violations sometimes facilitates ceasefire or the establishment of truth and reconciliation commissions.[16] Criminal proceedings have been confined to play a complementary role in relation to other dispute settlement methods.[17]

Relevant practice has also revealed that dispute settlement by bypassing criminal proceedings is neither always effective nor appropriate. Examples of this would be the case of Slobodan Milošević of the former Yugoslavia and Foday Sankoh of Sierra Leone. They once evaded prosecutions; however, after committing other criminal acts, they were eventually subjected to criminal proceedings.[18] In Chile and El Salvador, amnesties for individuals responsible for criminal acts further led to serious human rights violations.[19]

The fact that opportunities for prosecution are very limited would be problematic from the viewpoint of strengthening the legitimacy of international criminal

[14]See G. Simpson, 'War Crimes: A Critical Introduction', in T. McCormack & G. Simpson, *The Law of War Crimes, National and International Approaches* (Boston: Kluwer Law International, 1997), 1–30.

[15]D. Forsythe, 'Politics and the International Tribunal for the Former Yugoslavia', in *The Prosecution of International Crimes*, eds R. Clark & M. Sann (New Brunswick: Transaction, 1996), 199; Y. Ōnuma, *Jinken, Kokka, Bunmei – Fuhenshugitekijinkenkan kara Bunsaitekijinkenkan e (Human Rights, State, and Civilization – From Universal Perspective of Human Rights to Transcivilizational Perspective of Human Rights)* (Tokyo: Chikuma Shobō, 1998), 103.

[16]With regard to the problem of amnesties, see J. Dugard, 'Reconciliation and Justice: The South African Experience', *Transnational Law and Contemporary Problems* 8 (1998): 277–311; D. Wippman, 'Atrocities, Deterrence, and the Limits of International Justice', *Fordham International Law Journal* 23 (1999): 473–88; D. Majzub, 'Peace or Justice? Amnesties and the International Criminal Court', *Melbourne Journal of International Law* 3 (2002): 247–79.

[17]See M. Scharf, 'Justice Versus Peace', in *The United States and the International Criminal Court – National Security and International Law*, eds S. Sewall & C. Kaysen (Boston: Rowman & Littlefield Publishers, Inc., 2000), 179–93; S. Ratner & J. Abrams, *Accountability for Human Rights Atrocities in International Law, Beyond the Nuremberg Legacy,* 2nd ed. (Oxford: Oxford University Press, 2001), 228–52; L. Sadat, 'International Criminal Law and Alternative Modes of Redress', in *International Criminal Law and the Current Development of Public International Law*, ed. A. Zimmermann (Berlin: Duncker & Humbolt, 2003), 161–94. Regarding civil remedies, see also R. Wedgwood, 'National Courts and the Prosecution of War Crimes', in *Substantive and Procedural Aspects of International Criminal Law, The Experience of International and National Courts*, vol.1, eds G. McDonald & O. Swaak-Goldman (The Hague: Kluwer Law International, 2000), 410–12.

[18]Sadat, supra n. 17, at 174.

[19]Scharf, supra n. 17, at 182.

law. However, the complete renunciation of prosecutions would be even more harmful. It would not be appropriate to expect too much of the preventive function of international criminal law. Nonetheless, we should not underestimate the risk of the 'culture of impunity' brought about by the total negation of prosecution under international law, which would make would-be criminals bolder and aggravate a chain of violence.[20]

In case international criminal law cannot be effectively executed, it may still be possible to expect certain milder effects as a social norm. That is, international criminal law might offer the grounds on which various actors building international public opinion criticize illegal acts. At this point, international criminal law bears resemblance to international law on armed conflicts, and the notion of *jus cogens* and that of the obligations *erga omnes*. The complete implementation of certain international rules or legal notions is comparatively difficult.[21] In relation to the problem of the superior orders defense, a comment by Yasuaki Ōnuma, who evaluated the Nuremberg and Tokyo Trials from such a point of view, is noteworthy. He argues that the notion of the 'obligation to disobey illegal state orders' would ease mental isolation of individuals who try to implement international obligations, and it could be a measure to impede a general tendency toward war before reaching an extreme situation.[22]

Thus, the implementation of international criminal law appears to bear considerable significance, although it should not be overestimated. Several international tribunals have already implemented judicial proceedings. Moreover, the scope of the application of international criminal law at the national level has gradually been widened. In order to make relevant state practice worthwhile, it is crucial to concretely lay down international rules in criminal matters as well as reexamine basic rule-making methods. Heretofore discussions on the superior orders defense seem to bear an important implication for such a reexamination.

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[20]See E. Bradley, 'In Search for Justice – A Truth in Reconciliation Commission for Rwanda', *Detroit College of Law Journal of International Law and Practice* 7 (1998): 150–52; Sadat, supra n. 17, at 185–6.

[21]The views which underline the notion of *jus cogens* in international law as 'supplemental arguments' include C. Ford, 'Adjudicating jus cogens', *Wisconsin International Law Journal* 13 (1994): 179–80. Schachter also upholds the notion of the obligations *erga omnes* as strengthening the sense of international obligations (O. Schachter, *International Law in Theory and Practice* (Dordrecht: Martinus Nijhoff Publishers, 1991), 211–3). Ōnuma draws attention to 'the communicative function', 'the function of embodying shared understandings of international society', and 'the justifying and legitimating function' of international law (Onuma Y., 'International Law in and with International Politics: The Functions of International Law in International Society', *European Journal of International Law* 14 (2003): 130–39).

[22]Y. Ōnuma, *Tōkyōsaiban kara Sengosekinin no Sisō e (From the Tokyo Trial to the Idea of Postwar Responsibility)*, 4th ed. (Tokyo: Tōshindō, 1997), 52–4. See also Y. Ōnuma, *Sensōsekininron Josetsu (Introductory Study on the Responsibility for War)* (Tokyo: University of Tokyo Press, 1975), 350.

1.3 Terminology

1.3.1 The Defense of Superior Orders

The 'defense of superior orders' means an assertion of immunity by the accused on the ground that he/she committed criminal acts under the orders of his/her superiors. Occasionally, the word 'plea' is used in stead of 'defense', but in common law, the former usually means a response of 'guilty', 'not guilty', or 'no contest' by the accused in an arraignment. Moreover, in academic arguments and state practice in international law, the term 'superior orders defense' has generally been used when referring to an assertion of the accused to be immunized because of the existence of orders.

A legal consequence of the superior orders defense has been discussed in various ways, as will be seen in the following chapters. However, there has not been any specific conflict of views on the terminology itself.

1.3.2 Defense

The word 'defense' is originally a terminology of common law. 'Defense' refers to a statement by a defendant on why he/she should be acquitted notwithstanding that other elements of a crime have been proved.[23] In the national criminal laws of continental law countries such as Germany, relevant aspects are examined under the notions of the 'definition of the crime (*tatbestand*)', 'wrongfulness or unlawfulness (*rechtswidrigkeit*)', and 'culpability or blameworthiness (*schuld*)'. However, such classification has not been adopted in international criminal law thus far. All relevant factors have been discussed under the term 'defense'.

The use of the term 'defense' as a general ground for immunity naturally reflects the entire framework for analyzing the notion of crime in international law.

In the theory of criminal law in many continental law countries, the analysis of the problem is conducted in terms of the three components stated above. The subjective and objective elements of a crime are examined in light of these components, and the mutual relationship among these elements is investigated. On the other hand, in the theory of criminal law in common law countries, the notions of the 'definition of the crime', 'wrongfulness or unlawfulness', and 'culpability or blameworthiness' are not prominent. In common law, the two factors of *actus reus* (guilty act or deed of the crime) and *mens rea* (guilty mind or mental element) are examined

[23] J. Smith & B. Hogan, *Criminal Law,* 6th ed. (London: Butterworths, 1988), 177–8; M. Allen, *Textbook on Criminal Law*, 8th ed. (Oxford; New York: Oxford University Press, 2005), 158–9. J. Dressler, *Understanding Criminal Law*, 3rd ed. (New York: Lexis Publishing, 2001), 201.

first. Then, the notion of 'defense' is contraposed against these elements; this determines whether or not the case is proved.[24]

Some legal theories of continental countries seem to come close to those of common law countries. However, certain differences between the frameworks of analysis of the respective theories make them fundamentally heterogeneous.

For example, the argument that the definition of the crime (*tatbestand*) is identical to wrongfulness (*rechtswidrigkeit*) and can only be prescribed by the objective element[25] may be recognized as unifying objective element and subjective element, respectively. However, this argument analyzes the objective element by making use of the two notions of the definition of crime and wrongfulness. It is different from the common law theory, which deals with the single notion of *actus reus*.

Another argument that understands the objective element as the definition of the crime reflecting wrongfulness, and subjective element as the definition of the crime reflecting culpability,[26] appears to come close to the dual approach of common law theory. However, such an argument as associating the subjective element with the definition of the crime seems peculiar when compared to the other continental law theories. There arises a conflict of views to which common law theory is basically indifferent.[27]

International criminal law has not introduced a method for analyzing the objective and subjective elements of a crime under the three notions used in the theory of continental law countries. Neither the objective element of a crime nor its substantive element is respectively classified into the notions of the definition of the crime, wrongfulness, and culpability. Further, the international legal theory does not classify the consolidated notion of the objective element as well as that of subjective element into one or two of the three notions.

The latest texts of international criminal law tend to discuss international crimes by employing the notions of *actus reus* and *mens rea*, or objective element and subjective element.[28] Recent international judicial practice also uses the terms *actus reus* and *mens rea*.[29] In light of these circumstances, it can be said that

[24]With regard to the difference of those theories of criminal law, see G. Fletcher, 'Contemporary Legal Scholarship: Achievements and Prospects: Criminal Law: Criminal Theory in the Twentieth Century', *Theoretical Inquiries in Law* 2 (2001): 265–86.

[25]Y. Takigawa, 'Keihō ni okeru Kōseiyōken no Kinō (The Function of the Definition of the Crime in Criminal Law)', *Keihō Zasshi* 1, no. 2 (1950): 171.

[26]M. Maeda, *Keihō Sōron Kōgi (Lectures on the General Part of Criminal Law),* 2nd ed. (Tokyo: Tokyo University Press, 1994), 100–107; *Ibid.,* 3rd ed. (1998), 51–2.

[27]With regard to the development of the theories of criminal law, see Ryūichi Hirano, *Hanzairon no Shomondai (Jō) Sōron (Problems of the Theories of Crime (First Part) General Part)* (Tokyo: Yūhikaku, 1981), 1–34.

[28]For instance, K. Kittichaisaree, *International Criminal Law* (New York; London: Oxford University Press, 2001); A. Cassese, *International Criminal Law*, 2nd ed. (Oxford; New York: Oxford University Press, 2008).

[29]For instance, the ICTY judgment in *Furundzija* (Judgment (Trial Chamber), *Prosecutor v. Anto Furundzija*, IT-95-17/1 (10 December 1998)).