

# The Evolution of Command Responsibility in International Humanitarian Law

Max Markham, Stanford University

*This paper investigates the international legal roots and history of the principle of command responsibility. Tracing its roots back to Chinese philosopher Sun Tzu's The Art of War, the principle of command responsibility has increasingly become a more controversial topic in the context of international law. This paper closely examines specific cases advancing and interpreting the application of command responsibility, particularly in both the ICTY and ICTR with relation to humanitarian abuses in the past 20 years. Finally, the paper examines the definition of command responsibility held by the ICC as established by the Rome Statute in 1998 and the customary international law to be maintained in future humanitarian cases.*

**T**HE DOCTRINE OF command responsibility, though defined very briefly in most international tribunal statutes, is a highly contentious topic in the realm of international humanitarian law. Defined as “the responsibility of commanders for war crimes committed by subordinate members of their armed forces or other persons subject to their control,” (Burnett 1985, 76) the doctrine has been explicitly developed over the course of the 20th and 21st centuries via war crime tribunals responsible for bringing justice after wartime malpractices. In modern times, it has worked its way into preeminent precedents for international law, notably the Additional Protocol I to the Geneva Convention of 1949, the International Criminal Tribunal for the former Yugoslavia (ICTY) and International Criminal Tribunal for Rwanda (ICTR), as well as the Rome Statute of the

International Criminal Court (ICC). Command responsibility is established in three ways, as will be explored in this paper: via the superior-subordinate relationship, in which the superior exercises ‘effective control’ over the subordinate (Danner 2005, 130); via the *mens rea* requirement, in which the superior ‘had reason to know’ or ‘should have known’ of his subordinates’ actions; and the failure to take adequate responsibility for the actions of subordinates in punishing and/or preventing the commission of war crimes (Danner 2005). The *mens rea* requirement, specifically, has been the subject of huge controversy in its application to superiors in terms of whether guilt can be imputed based on available or ascertainable information, or if guilt can be imputed based on the superior having effective control and hence a *duty* to know and have access to information regarding his subordinates’ actions. This paper will explore the evolution

*Max Markham is a senior at Stanford University, majoring in International Relations and Modern Languages. He has worked for CNN and contributes regularly to Policymic.com, an online policy forum for debate on current events, focusing mainly on politics and social issues. He speaks four languages, and has travelled to over 40 countries, and studied abroad in Paris and Madrid during his junior year. He was born and raised in New York City, where he attended the United Nations International School, holding dual citizenship with New Zealand. He enjoys discussing politics, fashion shows, and playing/watching tennis. He can be reached via email at [mmarkham@stanford.edu](mailto:mmarkham@stanford.edu).*

of the doctrine of command responsibility, tracing its roots back to pre-World War II documentation that helped establish and develop its modern jurisprudence.

The topic of command responsibility as a doctrinal outline for international or domestic law is rooted in ancient texts – namely in *The Art of War* dating back to the end of the sixth century B.C. when Chinese military philosopher Sun Tzu developed the idea of commanders taking responsibility for the civility of their subordinates in military treatise (Levine 2005)— influencing many of the military and political tactics of the Eastern world. Almost two thousand years later in 1474, Peter von Hagenbach was put on trial for his role in the enabling of rape, torture, murder, and illegal distribution under his jurisdiction as governor on the Upper Rhine. Von Hagenbach's trial was widely regarded to be one of the first forms of an international criminal tribunal held on the basis of customary law at the time. Pivotal to the establishment of his guilt was “the question of compliance with superior orders” (Greppi 1997) under the Duke of Burgundy, Charles the Bold. His defence, in his trial before the Archduke of Austria and a coalition of 28 state judges, was mere compliance with superior orders, notably quoted as saying, “is it not known that soldiers owe absolute obedience to their superiors?” (Danner 2011, 130) as well as attributing this line of defence to Charles the Bold's admission of *ex post factum* responsibility. Regardless of his defence, Hagenbach was found guilty and beheaded, based on the proof that he was linked to “crimes which he had the duty to prevent” (Danner 2011, 130).

The principle was further explored by American law during the Civil War by General Order 100, known as the Lieber Code, signed by President Lincoln in 1863 to direct the code of conduct for Union soldiers. Concerned mainly with the ethical and humane treatment of prisoners, the Lieber Code was seen as a critical development in military strategy and customary law, as well as a precursor to the Hague Regulations of 1907 (Doty 1998). As a means of enforcement, the Lieber Code placed criminal responsibility upon superiors for allowing the mistreatment of prisoners and enemies during wartime.

The Hague Conferences, first in 1899 and later in 1907, established principles of disarmament as well as compulsory arbitration by an international body or court (Hudson 1931). Further, the Hague Conventions promulgated and more firmly established the definition of war crimes, with Convention IV and X of 1907 concretely establishing “affirmative command duties in relation to the conduct of subordinate persons” (Bantekas 1993,

573). However, the Hague Conventions proposed no means of enforcement and were ultimately heavily violated by Germany in World War I, which resulted in a call for the trying of German commanders and high-level war crimes violators in the Treaty of Versailles, but did not result in much more than a few domestic trials (Danner 2005, 123).

World War II ushered in a deeper exploration of superior responsibility in the development of the international justice system. The Nuremberg military trials of 1946 undertook efforts to prosecute Nazi commanders based on their implementation of programs to exterminate undesirables. It was often the case that these commanders delivered contemptible orders to be carried out by their subordinates, as in the German Hostage and High Command cases. Commanders would then be held individually accountable for heinous conduct in which subordinate units participated (Banteka 1993, 574). Other Nuremberg cases followed suit, prosecuting superiors based on their inaction against *opposing* unlawful actions.

An important development in this post-WWII period occurred within the International Military Tribunal of the Far East, established by US General MacArthur, as Supreme Commander for the Allied Powers. Tomoyuki Yamashita, Japanese commander for the Philippines, was charged on the basis of his *failure* to discharge control of the actions of his subordinate units in the Philippines. The Yamashita case was one of the most pivotal and crucial cases for the development of command responsibility in the early 20th century. Similar to the Hostage and High Command cases of Nuremberg, it held Yamashita in contempt and prosecuted him on the basis of an *omission* of responsibility for his subordinates:

[Yamashita] lawfully disregarded and failed to discharge his duty as commander to control the operations of members of his command, permitting them to commit brutal atrocities and other high crimes against the people the United States and its allies and dependencies, and in particular show a series of acts which indicate a plan to massacre and exterminate a large part of unarmed non-combatant civilian population of the occupied territory, coupled with other acts of violence, cruelty and homicide inflicted upon civilian population and prisoners of war contrary to principles of international law (Far East Commission 1947).

He defended himself on the grounds that he had not

ordered or tolerated these acts, and pleaded not guilty on the grounds that he had no knowledge of the crimes in question taking place. He was found guilty, based on the Tribunal's finding that he "at the very least must have tacitly condoned the actions of the Japanese forces in question, and more likely he had both known as well as ordered the crimes" (Hendin 2003). Similarly, he was found guilty for failing to punish the subordinates with the established tacit knowledge he had. Notable in the case was the defense's failure to "contest that the war crimes were committed" and the prosecution's failure to charge him with the commission of war crimes or crimes against humanity, but rather with the "omission of action to prevent his men's behaviour" (Goldstone 2009, 71). The case was crucial for the development of international law in that it subsequently identified command responsibility specifically as a crime of omission, as it is now defined in many of the more modern tribunal and international court statutes, as well as by the United States Supreme Court, which overturned the *habeas corpus* appeal and authorized the execution by hanging of Tomoyuki Yamashita in February 1946 for his crimes against the peace (Mahle 1946). Further, The Yamashita Standard, as it is commonly known in international law, helped to define the *mens rea* standard in a stricter sense, which led to debate as to the customary international law in many of the modern *ad hoc* tribunals as will later be explored.

After the post-WWII developments in international law, there was a lull in its further expansion in the progression of the 20th century. "No express provision on superior responsibility was contained in the Geneva Conventions of 1949... this resulted in the decline in the use of the doctrine of superior responsibility for a period of over 30 years" (Bantekas 1993, 574). The nearly unanimous findings in the Nuremberg and Tokyo trials that imposed liabilities on superiors to control the actions of their subordinates, taking into account the "requisite standard of *mens rea*" (Levine 2005) expanded the level of knowledge necessary for conviction to one of less than actual express knowledge.

In 1977, the adoption of the Additional Protocol I of the Geneva Convention of 1949 further clarified the issues of superior knowledge and failing to act as alluded to in the post-WWII trials. Specifically, Article 86(2) deals with the notion of a superior failing to act, stating that guilt is imputed:

if they knew, or had information which should have enabled them to conclude in the circumstances at

the time, that he was committing or was going to commit such a breach and if they did not take all feasible measures within their power to prevent or repress the breach (Protocol Additional to the Geneva Conventions of 12 August 1949, 1977).

Article 87(1) goes on to state the requirement for military commanders "to prevent and, where necessary, to suppress and to report to competent authorities breaches of the Conventions and of this Protocol" (Protocol Additional to the Geneva Conventions of 12 August 1949, 1977). This is elaborated on by Article 87(3), which states:

...Parties to the conflict shall require any commander who is aware that subordinates or other persons under his control are going to commit or have committed a breach of the Conventions or of this Protocol, to initiate such steps as are necessary to prevent such violations of the Conventions or this Protocol, and, where appropriate, to initiate disciplinary or penal action against violators thereof (Protocol Additional to the Geneva Conventions of 12 August 1949, 1977).

It should be noted that this was the first explicit international documentation of the knowledge argument within the theory of command responsibility. It should be further noted that the definition of Protocol I explicitly stipulates superior ascertainable knowledge to denote responsibility in the actions of subordinates, but does not necessarily take into account superior negligence, or the more strictly defined proposal of "should have known" as it is defined in the Rome Statute, which will be explored later. As shown, Article 87(3) states very specifically that it is a requirement of commanders "who are aware" of their subordinates' breaches of international law to exercise superior responsibility and prevention mechanisms against their subordinates. At the same time, there is much debate as to whether the previous Article 86(2) alludes to the requirement of knowledge by a superior, either making reference to provided information subject to neglect by the superior, or to information not provided due to the failure of communications or reporting systems (Hendin 2003).

### International Criminal Tribunal for the Former Yugoslavia

The formation of the *ad hoc* tribunals of Yugoslavia and Rwanda has specifically delved deeper into the international jurisprudence of the command responsibility

theory. On May 25, 1993, United Nations Security Council Resolution 827 effectively established the International Tribunal for the Former Yugoslavia (ICTY). Notable in its establishment was its limit in applying customary international law, therefore “interpreting the *mens rea* standard applicable to command responsibility as it existed in customary law at the time of commission of alleged offences” (Levine 2005). As found in the ICTY statute, Article 7(3) intends to more specifically define command responsibility (and the element of *mens rea*) by stating:

[acts] committed by a subordinate do not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take such necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof (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, 1993).

It is important to note the two different levels of knowledge that are encompassed in the ICTY’s definition of *mens rea* – direct and ‘actual’ knowledge, the existence of which can be ascertained through testimony or through the compiling of circumstantial evidence; as well as ‘had reason to know’ which was defined more strictly by the Appeals Chamber of the Celebici and Akayesu cases of the ICTY and ICTR, respectively (Levine 2005).

With the Celebici case, starting in 1997 and continuing until the end of 1998, came a new identification of direct and indirect command responsibility, as well as a more definitive definition of the *mens rea* argument. The ICTY found that ‘direct’ responsibility was established as a result of a positive action, whereas ‘indirect’ responsibility would be established due to the omission or “failure to undertake a necessary act” (Hendin 2003). Further, the Celebici Trial Chamber judgement took into account the issue of culpability of non-militarily involved superiors, commenting, “a superior may be exposed to culpability on the basis of *de facto* authority so long as the individual has the fundamental power to control the acts of subordinates” (Hendin 2003). The Trial Chamber’s judgement was notable in that it differed from the stricter Yamashita standard of ‘should have known,’ advocating for the less strict ‘had reason to know’ and using as proof the Additional Protocol I of the Geneva

Convention as the customary international law due to:

...an interpretation of the terms of this provision in accordance with their ordinary meaning [leading] to the conclusion, confirmed by the travaux préparatoires, that a superior can be held criminally responsible only if some specific information was in fact available to him which would provide notice of offences committed by his subordinates (Prosecutor vs. Delalic Et Al 2001).

Further, the Trial Chamber noted that explicit statement of ‘had reason to know’ did not allow for wilful negligence to “criminal acts of subordinates” (Hendin 2003). Instead, it established that the *mens rea* for command responsibility could be found “...where [the superior] had in his possession information of a nature, which... would put him on notice of the risk of such offences by indicating the need for additional investigation...” as well as through the existence of circumstantial or direct evidence leading to “actual knowledge” (Prosecutor vs. Delalic et al. 2001).

Soon after the Celebici case got under way, another case that reviewed similar principles of command responsibility was concurrently held – regarding Tihomir Blaskic – though the conclusion to which the Trial Chamber came was different than that of the Celebici case. Taking into account the Celebici case, the Blaskic Trial Chamber found that *effective* control over subordinates or persons committing the crimes must be established for command responsibility to be charged, and that these subordinates did not necessarily have to be *formally* under the control of the superior “or in his chain of command...” for him to “be found culpable criminally for crimes committed by them” (Hendin 2003). Similarly using the Additional Protocol I as the foundation for customary international law, the Blaskic Trial Chamber found that Article 86(2) was regarded to be in conjunction with Article 87, imposing “a duty on commanders to be constantly informed of the way in which their subordinates carry out the tasks entrusted to them, and to take the necessary measure for this purpose” (Prosecutor vs. Blaskic 2000). As a result of this reading of Protocol I, Article 86(2) was deemed, by the Trial Chamber, to be understood as synchronized with Article 87, therefore defining the *mens rea* of command responsibility with the stricter ‘should have known’ standard (Levine 2005).

The Blaskic Trial Chamber’s judgment delivered in 2000 conflicted directly with the ‘had reason to know’ customary international law *mens rea* standard of the

Celebici Trial Chamber judgment delivered less than two years prior. Thus, the Appeals Chamber's decision of the Celebici case as well as the Blaskic Appeals Chamber held binding the decision over both of the Trial Chamber judgments, that there was "no consistent trend in the decisions that emerged out of the military trials conducted after the Second World War" (Prosecutor vs. Delalic et al 2001) in regards to a defined customary international law of the *mens rea* standard. It further elaborated that Article 86(2) was correctly interpreted by the Trial Chamber in the Celebici case, in that it directly adheres to the principle of 'had reason to know,' notably "holding that the ordinary meaning of the provision indicated that the commander must have some information available to him which puts him on notice of the commission of unlawful acts by his subordinates" (Levine 2005). This dispelling of a standard of negligence from the ICTY became a trend toward "setting a standard of due diligence on the part of the [superior]" (Hendin 2003), in that the ICTY held that the evidence for the *mens rea* standard must be evaluated on a case-by-case basis. The final decision was made to maintain that the *mens rea* standard is only established from the *existence of information* leading the superior to have reason to know or be able to identify the criminal acts being undertaken by his subordinates.

### International Criminal Tribunal for Rwanda

Meanwhile, in November 1994, United Nations Security Council Resolution 955 effectively established the International Criminal Tribunal for Rwanda (ICTR), notable in that it was established to deal with a non-international conflict yet still contained the defined doctrine of command responsibility under Article 6(3) (the equivalent of Article 7(3) in the ICTY statute) in its statute (International Criminal Tribunal for Rwanda Statute 1994). The trial of Jean-Paul Akayesu, though largely known for its establishment of the crime of genocide as perpetrated by an individual, also reflected decisions pertinent to the establishment of Akayesu as a superior through *de jure* power as he was appointed to the position of 'bourgmestre' (a position of authority deemed to be in charge of the communal police and answerable to the local 'Prefect' (Prosecutor vs. Clément Kayishema & Obed Ruzindana 1999)) in the village of Taba (Hendin 2003). Using this *de jure* superiority as the basis for their judgment on command responsibility, the Trial Chamber stated:

...in due course found that Akayesu was responsible for the maintenance of law and order in the village.

The Tribunal further found that he either knew, or in the alternative, had reason to have known of the criminal acts taking place, particularly, near his own office and he did nothing to either prevent the crime or to punish the perpetrators (Hendin 2003).

Ultimately, the Trial Chamber did not find Akayesu guilty via Article 6(3) of the statute, and rather sentenced him on the grounds of *actus reus* for his complicity in genocide by aiding and abetting, instigation and by procuring means (Prosecutor vs. Jean-Paul Akayesu 1998).

Another case in May 1999, concerning Clément Kayishema held, in a similar fashion as the trial of Akayesu, that Article 6(3) of the statute expresses a "clear duty upon those in authority, with the requisite means at their disposal, to prevent or punish the commission of a crime" (Hendin 2003), and applied this statute to civilians exerting "requisite authority" (Prosecutor vs. Clément Kayishema & Obed Ruzindana 1999). A contentious subject due to the nature of the Rwandan conflict was the allusion by the Trial Chamber to the *de facto* power of a superior, notwithstanding the formality and/or explicit definition of his or her power. The Tribunal also noted that the *mens rea* standard for non-military superiors with established *de facto* power would be held to a lower standard of 'had reason to know,' insofar as that it does not "demand a *prima facie* duty upon a non-military commander to be seized of every activity of all persons under his or her control" (Prosecutor vs. Clément Kayishema & Obed Ruzindana 1999). Ultimately, the court ruled:

In light of this incontestable control that Kayishema enjoyed, and his overarching duty as a Prefect to maintain public order, the Trial Chamber is of the opinion that a positive duty upon Kayishema existed to prevent the commission of the massacres. ... No evidence was adducted that he attempted to prevent the atrocities that he knew were about to occur and which were within his power to prevent (Prosecutor vs. Clément Kayishema & Obed Ruzindana 1999).

He was sentenced to life imprisonment by the Trial Chamber, and the sentence was upheld by the Appeals Chamber in June 2001.

Also in 1999 was a pivotal trial against Alfred Musema-Uwimana, who was prosecuted on the basis of his complicity in genocide and his superior responsibility for committing of genocide due to his ownership of a tea factory in the Byumba Préfecture. As a non-military

civilian, Musema was found guilty of criminal responsibility for his *de jure* as well as *de facto* control over his employees and failing “to take any measure to prevent or punish the commission of these crimes,” instead “aiding and abetting in their commission by his presence, and, in some cases, his participation” (Alfred Musema vs. the Prosecutor Appeals Judgment 2001).

Although it is sometimes asserted that the ICTR failed to properly develop or apply the doctrine of command responsibility (Lipmann 2001), it is apparent from the Musema, Kayishema and Akayesu cases that the ICTR did, somewhat clearly, define command responsibility and develop it in terms of its relevance to the unique national Rwandan conflict. In the Akayesu case, though he was determined to have exercised *de jure* control over his subordinates, he was deemed to not have had effective or structural control and therefore was not convicted on the *mens rea* standard of responsibility for the actions of his subordinates, and the strict liability standard was rejected. But in the other two aforementioned cases, both Kayishema and Musema’s convictions expanded the nature of the command responsibility doctrine to encompass civilian responsibility, with the Tribunal explicitly establishing that the *mens rea* standard, though lower for non-military or *de jure* superiority, was still applicable to civilian superiors with structural control over their subordinates. It would thus appear as if the comprehension of command responsibility with relation to the *mens rea* standard has been well established by both Tribunals insofar as the negation of the standard of negligence (Sarooshi & Evans 2001). Further, both Tribunals have seemingly distinguished more important topics incorporated into the Rome Statute, such as civilian versus military responsibility (and the differences, if any, in standards of *mens rea* for each) as well as the ‘had reason to know’ versus ‘should have known’ arguments of customary international law.

### International Criminal Court

During the undertaking of both the ICTY and the ICTR, momentum was channelled into establishing the International Criminal Court via the Rome Statute, enacted on 17 July 1998. Article 28 notably defines the ICC’s position on superior responsibility, with 28(a) referring explicitly to “a military commander or person effectively acting as a military commander (Rome Statute of the International Criminal Court 1998)” and article 28(b) referring to “superior and subordinate relationships not described in paragraph (a)” (Rome Statute of the International Criminal Court 1998), interpreted to encompass

acts carried out by non-military civilians, as was taken into account in the Kayishema and Musema cases at the ICTR. For command responsibility to be established with regard to military personnel, Article 28(a) specifies that a superior must have failed to exercise “effective command and control” or “effective authority and control” over his or her subordinates, notably making use of what has been interpreted to be a more strict reading of the *mens rea* requirement in that the superior “either knew or, owing to the circumstances at the time, *should have known* that the forces were committing or about to commit such a crime” (Rome Statute of the International Criminal Court 1998). Further, as distinct from 28(a), Article 28(b) notably does not include the ‘should have known’ clause, rather replacing it with “knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such crimes” (Rome Statute of the International Criminal Court 1998). Similar to the ICTR in the Kayishema case, the Statute presents jurisprudence under which non-military superiors with effective control (and, notably, effective control within the specific crimes that were committed (Rome Statute of the International Criminal Court 1998)) are held to a lower standard of the *mens rea* requirement—the word ‘clearly,’ as an expression of an indication of the act or intention to commit crimes is notable, seemingly heightening the evidentiary basis for which *mens rea* must be established. Further, it lowers the liability standard for civilians who express influence over subordinates but not formally distinguished ‘effective authority and control’ and absolves them of the requirement to make use of their “informal influence and persuasion” (Lipmann 2001).

Still, there is great debate as to whether the jurisprudence of the Rome Statute, in fact, does indicate the stricter ‘should have known’ *mens rea* requirement. As Eugenia Levine writes in her article on the *mens rea* requirement:

Interpreted literally, Article 28(a) adopts the stricter ‘should have known’ standard. Notably, the Trial Chamber in Celebici strongly suggested that the language of Article 28(a) may reasonably be interpreted to impose an affirmative duty to remain informed of the activities of subordinates (Levine 2005).

Arguably, the implementation of the stricter ‘should have known’ requirement of superiors can be used as a deterrent, strictly establishing the role of a superior in international criminal law. At the same time, an interpretation of

superiority as a duty to preserve international law among subordinates could be considered a breach of legality in that it does not adhere to the direct commission of a crime, rather an enforcement of peace among subordinates. German law professor Kai Ambos advocates for the standard of *conscious* negligence to be interpreted as international jurisprudence, saying:

The degree of *mens rea* required is, apart from awareness of the effective control and knowledge explicitly mentioned in Article 7(3) ICTY, Article 6(3) ICTR and Article 28(a)(i), (b)(i) ICC Statute, conscious negligence or recklessness. This already follows from the wording of Article 86(2) AP I (that the superior 'had information which should have enabled them to conclude . . .'), which correctly has been interpreted as conscious ignorance in the sense of willful blindness. Similarly, the 'should have known' and 'consciously disregarded' standards of Article 28(1)(a) and (2)(a) do not require awareness, nor do they require the imputation of knowledge on the basis of purely objective facts. In essence, the superior must possess information that enables them to conclude that the subordinates are committing crimes (Ambos 2005).

Instead, Ambos interprets the Statute to read that imputation of knowledge is not guaranteed by the established effective control, but rather that there must be a situation of conscious negligence or "advertent recklessness" (Sarooshi & Evans 2001) with an availability of information for command guilt to be imputed.

As shown, the doctrine of command responsibility has developed as an age-old issue into an important cornerstone of the modern jurisprudence of international humanitarian law. With respect to *mens rea* especially, the exact definitions and applications of command responsibility have been hotly contested, with varying authorities advocating for different interpretations of modern law. The Rome Statute, ICTY and ICTR, and the Additional Protocol I to the Geneva Convention have all contributed to modern customary international law. What they all seem to have in common, though, is the subtle ambiguity of language that allows each case of humanitarian violations and war crimes to be treated uniquely. As reprehensible crimes against humanity continue to occur internationally, international justice, when applied, will undoubtedly be further developed by the particularities of each unique trial.

## References

Alfred Musema vs. the Prosecutor Appeals Judgement. Tribunal Pénal International Pour Le Rwanda. 16 Nov. 2001. ICTR. Web. 2 June 2011.

Ambos, K. "Joint Criminal Enterprise and Command Responsibility." *Journal of International Criminal Justice* 5.1 (2005): 159-83. Oxford Journals. Web. 22 May 2011. <http://jicj.oxfordjournals.org/>.

Bantekas, Ilias. "The Contemporary Law of Superior Responsibility." *The American Journal of International Law* 93.3 (1993): 573-95. JSTOR. Web. 22 May 2011. <http://www.jstor.org/stable/2555261>.

Burnett, Weston "Command Responsibility and a Case Study of the Criminal Responsibility of Israeli Military Commanders for the Pogrom at Shatila and Sabra" (1985) 107 *Military Law Review* 71 at 76.

Danner, Allison M., and Jenny S. Martinez. "Guilty Associations: Joint Criminal Enterprise, Command Responsibility, and the Development of International Criminal Law." *California Law Review* 3.1 (2005): 75-169. JSTOR. Web. 2 June 2011.

Doty, Grant R. "The United States and the Development of the Laws of Land Warfare." *Military Law Review* 156 (1998): 224-55. Web. 1 June 2011. [www.jagcnet.army.mil](http://www.jagcnet.army.mil).

Far Eastern Commission. Division of Publications. Office of Public Affairs. *Activities of the Far Eastern Commission: Report by the Secretary General, February 26, 1946-July 10, 1947*. Washington, D.C.: Department of State, 1947. Print.

Goldstone, Richard J., and Adam M. Smith. *International Judicial Institutions: the Architecture of International Justice at Home and Abroad*. London: Routledge, 2009. Print.

Greppi, Edoardo. "The Evolution of Individual Criminal Responsibility under International Law." *International Committee of the Red Cross*. 30 Sept. 1999. Web. 1 June 2011. <http://www.icrc.org/eng/resources/documents/misc/57jq2x.htm>.

Hendin, Stuart E. "Command Responsibility and Superior Orders in the Twentieth Century - A Century of Evolution." *Murdoch University in Perth Australia*. Mar.

2003. Web. 4 June 2011. [http://www.murdoch.edu.au/elaw/issues/v10n1/hendin101\\_text.html](http://www.murdoch.edu.au/elaw/issues/v10n1/hendin101_text.html).
- Hudson, Manley O. "Present Status of the Hague Conventions of 1899 and 1907." *American Journal of International Law* 25.1 (1931): 114-17. JSTOR. *American Society of International Law*, Jan. 1931. Web. 1 June 2011.
- ICTY. Appeals Chamber. *Appeals Chamber Expands the Scope of Strugar's Responsibility for Dubrovnik Shelling*. ICTY. United Nations, 17 July 2008. Web. 2 June 2011.
- 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, Statute. (1993). Web.
- International Criminal Tribunal for Rwanda Statute. (1994). Web.
- Kenneth A. Howard, "Command Responsibility for War Crimes," *Journal of Public Law* 21 (1972): 16; Annie Mahle, "The Yamashita Standard," *Justice and the Generals*, PBS-Around the World. Online. [www.pbs.org/wnet/justice/world\\_issues\\_yam.html](http://www.pbs.org/wnet/justice/world_issues_yam.html).
- Levine, Eugenia. "Command Responsibility." *Global Policy Forum* (2005). Web. 22 May 2011. <<http://www.globalpolicy.org/component/content/article/163/28306.html>>.
- Lippman, Matthew. "Humanitarian Law: The Uncertain Contours of Command Responsibility." *Tulsa Journal of Comparative & International Law* 9 (2001). *LexisNexis Academic*. Web. 1 June 2011.
- Mirceva, Stojanka. "Why the International Criminal Court Is Different." *Global Policy Forum* (2004). Web. 22 May 2011. <http://www.globalpolicy.org/component/content/article/164-icc/28450.html>.
- Neuffer, Elizabeth. *The Key to My Neighbor's House: Seeking Justice in Bosnia and Rwanda*. New York: Picador, 2001. Print.
- Power, Samantha. *A Problem from Hell: America and the Age of Genocide*. New York: Basic, 2002. Print.
- Prosecutor vs. Blaskic. 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. 3 Mar. 2000. ICTY. Web. 1 June 2011.
- Prosecutor vs. Delalic Et Al. 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. 20 Feb. 2001. ICTY. Web. 2 June 2011.
- Prosecutor vs. Clément Kayishema & Obed Ruzindana. Tribunal Pénal International Pour Le Rwanda. 21 May 1999. ICTR. Web. 3 June 2011.
- Prosecutor vs. Jean-Paul Akayesu. Tribunal Pénal International Pour Le Rwanda. 2 Sept. 1998. ICTR. Web. 3 June 2011.
- Prosecutor vs. Milutinovic Et Al. 3. 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. 26 Feb. 2009. ICTY. Web. 2 June 2011.
- Prosecutor vs. Momcilo Krajisnik. 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. 17 Mar. 2009. ICTY. Web. 2 June 2011.
- Prosecutor vs. Sefer Halilovic. 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. 16 Nov. 2005. ICTY. Web. 2 June 2011.
- Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I)*. 8 June 1977. International Humanitarian Law. Geneva, Switzerland.
- Rome Statute of the International Criminal Court (1998). Print.
- Sarooshi, Danesh, and Malcolm D. Evans. "Command Responsibility and the Blaskic Case." *The International and Comparative Law Quarterly* 50.2 (2001): 452-65. JSTOR. Web. 2 June 2011.
- Sefer HALILOVIĆ. Rep. no. IT-01-48. The Hague, Netherlands: International Criminal Tribunal for the Former Yugoslavia. *United Nations*. Web. 22 May 2011. <[http://www.icty.org/x/cases/halilovic/cis/en/cis\\_halilovic.pdf](http://www.icty.org/x/cases/halilovic/cis/en/cis_halilovic.pdf)>.