

INTERNATIONAL RESPONSIBILITY FOR HOSTILE ACTS
OF PRIVATE PERSONS AGAINST FOREIGN STATES

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by

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TO MARILYN
IN GRATEFUL AND LOVING TRIBUTE TO
HER FAITH, ENTHUSIASM AND DEDICATION

PREFACE

Mankind's preoccupation with survival in this age has given renewed impetus to the idea of a world community deeply concerned with the prevention of friction between nations. The achievement to date has been largely in terms of efforts to control acts of aggression committed by governments. Most people have assumed that the military rivalry between the great powers is the only threat confronting the world today. While readily conceding that this threat has placed mankind in a highly precarious situation, this book, on the other hand, reflects my conviction that any program designed to attain world peace will be significantly incomplete without the control of hostile actions which private persons have been known to commit against foreign nations. Experience shows that these actions not only endanger the good relations between states, but are also likely to plunge the world community into wars, thus spreading destruction and human suffering everywhere.

The relation between hostile acts of private individuals and international peace was briefly discussed by Judge Philip C. Jessup in his book *A MODERN LAW OF NATIONS*. Speaking of the use of force by individuals, which is clearly the business of a new law of nations, he says on page 178 that "The problem of international law would be to catalogue those acts of individuals which have sufficient international significance to warrant placing their punishment under international auspices. Some of these would involve the illegal use of force and others would not. They might include terroristic activities, assassination of heads of state, counterfeiting of foreign currencies, the slave trade, traffic in narcotics, and unauthorized manufacture of atomic or other weapons."

Undoubtedly, there are many hostile actions which private persons may commit against foreign states. Judge Jessup has given us a partial catalogue of them. Another scholar may well mention others. It is probably hard to get a consensus on the actions that should be included in a book of this kind. Bearing this in mind, I have limited the scope of this study by treating those acts which are likely to have

a more immediate significance in the contemporary world, without losing sight of the knowledge given to us by experience. I am well aware that there may be objections to my arrangement, but in my decision I feel supported by the Draft Code of Offenses Against the Peace and Security of Mankind, proposed by the United Nations International Law Commission in 1951, which includes many of the offenses treated in these pages. The conclusions of the International Law Commission are thus close to those which have led me to reinterpret much of the law of international responsibility of private persons in the context of world peace. This may largely explain why I have also attempted to assess the methods by which states usually obtain jurisdiction to punish offenders. The appraisal of these methods has led me to believe that the establishment of an international criminal jurisdiction is the most desirable alternative, and perhaps the only one that may adequately satisfy the demands of justice.

It is a great pleasure to express my deep appreciation to those who, in a general way, have assisted me in the research and writing of this book. I should like to single out the following: the members of the Staff of the University of Detroit Library, especially Mrs. Alice E. Courtis, for their help in locating books and documents, and their promptness in processing material through inter-library loans; the libraries of Harvard, Yale and Michigan Law Schools for their courtesy in lending me all the material I requested; the editors of the *Fordham Law Review*, *Indiana Law Journal* and the *University of Pittsburgh Law Review* for graciously allowing me to reproduce material previously published in those journals; my good friends, Betty and Edward Stevens, who as a husband and wife team showed great skill and patience in deciphering and typing a rather unattractive and difficult manuscript; to the publisher of this work for its courtesy, consideration and understanding shown me in connection with publication; to my boy, Jay, for his patience and understanding in quietly accepting restrictions upon his freedom of movement while I was engaged in research and writing at home; and above all, I owe a profound debt of gratitude to my wife, to whom this book is dedicated, not only for her invaluable suggestions and patient assistance in many ways, but also for her unfailing faith, encouragement and dedication.

Manuel R. García-Mora

Detroit, Michigan
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LIST OF ABBREVIATIONS

A.C.	Law Reports, Appeal Cases, House of Lords (Great Britain)
Am. J. Comp. L.	American Journal of Comparative Law
Am. J. Int. L.	American Journal of International Law
Am. J. Int. L. Supp.	Supplement to the American Journal of International Law
Am. Pol. Sci. Rev. Annual Digest	American Political Science Review Annual Digest and Reports of Public International Law Cases. Beginning in 1950, they appear as International Law Reports.
Brit. Y.B. Int. L.	British Year Book of International Law
Calif. L. R.	California Law Review
Can. Rev. Stat.	Revised Statutes of Canada
Colum. L. R.	Columbia Law Review
Cong.	Congress of the United States
Co. Rep.	Coke's Law Reports (Great Britain)
Dept. State Bull.	Department of State Bulletin (United States)
Edw. III, Stat.	Statutes at Large of the United Kingdom
Fed.	Federal Reporter (United States)
F. 2d	Federal Reporter, Second Series (United States)
Fordham L. R.	Fordham Law Review
Geo.	Statutes at Large of the United Kingdom
Hague Recueil	Recueil des Cours, Académie de Droit International de la Haye

Harvard L. R.	Harvard Law Review
H. R.	House of Representatives (United States)
How.	Howard's United States Supreme Court Reports
Ind. L. J.	Indiana Law Journal
Inter-Amer. J. Y. B.	Inter-American Juridical Year Book
Int. & Comp. L. Q.	International and Comparative Law Quarterly
I. C. J., Reports	Reports of the International Court of Justice
Int. L. Q.	International Law Quarterly
J. Crim. L. & Criminology	Journal of Criminal Law and Criminology
L. Q. R.	Law Quarterly Review
L. T. R.	Law Times Reports (Great Britain)
Mich. L. R.	Michigan Law Review
N. Y. Times	New York Times
P. C. I. J.	Publications of the Permanent Court of International Justice
Proc. Am. Soc. Int. L.	Proceedings of the American Society of International Law
Q. B.	Law Reports, Queen's Bench Division (Great Britain)
Rev. Gén. de Droit Int. Public	Revue Général de Droit International Public
Rev. Stat.	Revised Statutes (United States)
South Dakota L. R.	South Dakota Law Review
Stat.	Statutes at Large of the United States
T. S.	United States Treaty Series
U.N.	United Nations
U.N. Treaty Ser.	United Nations Treaty Series
U. Pa. L. R.	University of Pennsylvania Law Review
U. of Toronto L. J.	University of Toronto Law Journal
U.S.	United States Supreme Court Reports

U.S.C.	United States Code
U.S.C.A.	United States Code Annotated
U.S. Const.	United States Constitution
U.S. Const. Amend.	United States Constitution, Amendment
U.S. Foreign Rel.	Papers Relating to the Foreign Relations of the United States
Vic.	Statutes at Large of the United Kingdom
Virginia L. R.	Virginia Law Review
W. Va. L. Q.	West Virginia Law Quarterly
Wheat.	Wheaton's United States Supreme Court Reports
Yale L. J.	Yale Law Journal