The question implicitly posed throughout *Accountability for Human Rights Atrocities* is the following: how far have we come since the Nuremberg trials. Established by the Allies post World War II, these trials marked the first real attempt to hold individuals to account for international crimes. The extent to which this accountability has further developed over the past sixty years is highly contentious. Cynics disparagingly point to the continued impunity for individuals who have committed atrocities in places such as Sri Lanka and Afghanistan and the lack of invocation and/or ratification of several treaties seeking to gain greater consensus on accountability. Enthusiasts point to the number of human rights treaties and laws drafted, signed and ratified by countries crossing geographic regions and political systems. The authors take a clear middle road—cautiously celebrating the achievements made since Nuremberg while pointing to the many gaps that remain and the lack of political will to move forward.

All three authors are respected international lawyers with rich career histories. Though the authors clearly demonstrate a strong understanding of the theoretical underpinnings of international law, they also bring wide practical experience to the discussion. From 1998 to 1999, Ratner served as a member of the United Nations group of experts chosen to consider options for bringing about justice for the Khmer Rouge victims. More recently, he worked in the legal division of International Committee of the Red Cross ICRC. Abrams has worked as a legal officer in the Office of Legal Affairs at the United Nations and Bischoff is a former associate legal officer of the International Criminal Tribunal for the former Yugoslavia ICTY. The authors’ comprehensive and detailed handling of their subject matter makes the book an essential introductory text for students of international criminal law and human rights. Perhaps in an attempt to appeal to a wider readership, this third edition provides a thought-provoking case study positing the various ways of achieving accountability for the atrocities committed by the Khmer Rouge. This creative contribution to the literature avoids the simplicity of an academic exercise through consideration of relevant political, cultural and economic factors and by providing a possible road map for action for human rights advocates. It is this section that moves the book from good to excellent.

The book is divided into three parts. Each builds upon the information provided in the last with the main arguments reappraised in the conclusion.

Part I provides a review of the substantive law related to individual accountability for atrocities and is clearly geared towards students of the subject. Chapter 1 outlines how treaty law has developed over the past century and presents basic concepts to clarify the difference between individual and state accountability. The next four chapters continue along the same vein and describe the development of international crimes for which individuals can be held accountable, namely genocide, crimes against humanity, war crimes and other human rights abuses (including slavery, forced labour, apartheid, etc). Various international criminal law concepts which extend and limit culpability are described in Chapter 6, which provides an excellent introduction to the
historical and political context of the drafting of the related treaties, the definitional issues
surrounding the crimes and the related complex and sometimes contradictory international and
domestic jurisprudence. While it is clear that the authors regard the development of international
law as a meaningful step towards accountability, the section, and, indeed, the book as a whole,
refrains from overoptimistically asserting the power of this body of law. Towards this end, the
text discusses several key challenges to the achievement of accountability. These include the
difficulty of determining when a crime is considered to be customary international law and the
seemingly arbitrary distinctions that bring some crimes into the realm of international law while
others remain outside. While acknowledging such difficulties, the authors counter with the
assertion that the gravity of these crimes provides the impetus for related international consensus
and mobilization.

Part II moves into an analysis of the various methods of accountability available for bringing
individuals to justice in international law. The text draws from a wide variety of sources
including the jurisprudence of the ICTY and ICTR to the Special Court in Sierra Leone, and
regional and national judgements. In Chapter 7 the authors articulate the moral, political and
legal goals behind these methods of accountability. They also put forward the problem that
holding individuals responsible for past atrocities could destabilise a new regime, stigmatise a
segment of the population or infringe upon the rights of the accused.1 The strength in the
authors’ argument is the assertion that a careful combination of the available means of achieving
accountability might make it possible to avoid some of these negative effects while still meeting
some of the above mentioned goals.

Chapter 8 rightly emphasises the importance of national systems and processes for
accountability. The authors argue that affected communities are likely to feel a greater sense of
ownership over domestic procedures and that the process can be made easier by perpetrators
having an increased proximity to victims, the accused and evidence.2 Still, domestic processes
necessitate a fair and effective national justice system and an economy robust enough to absorb
associated costs—components which the authors concede are often absent in countries where
atrocities occur. The text puts forth Ethiopia and Rwanda as two ‘desperately poor countries’
able to effectively engage in national processes of accountability without substantial
international support.3

Readers will consider that such problems of weak economies and political strife are not
significantly different in several other states facing decisions on accountability for past or
ongoing atrocities such as Chad, Sudan and Burundi. The unenthusiastic appraisal of the
Rwandan and Ethiopian cases does not provide readers with much hope for others. Certainly, the
situation in Sierra Leone is congruent with the author’s belief that these processes are likely too
difficult for weak states to bear alone. Following former Liberian president Charles Taylor’s
indictment by the Special Court for Sierra Leone and his capture in Nigeria, the Court and
Liberian President Ellen Johnson-Sirleaf requested that proceedings occur outside the region
because of fears of instability.4 Using the authority of Chapter VII of the United Nations Charter,

1 Steven R. Ratner, et al., Accountability for Human Rights Abuses in International Law: Beyond the Nuremberg
2 Ratner et al., p.203.
3 Ratner et al., p.204.
4 ‘Security Council Approves Trial Transfer of Former Liberian President Charles Taylor to Netherlands’,
Department of Public News and Information, News and Media Division, New York, June 2006.
the Security Council obliged and permitted the International Criminal Court (ICC) to host Special Court proceedings.\(^5\) The government of the Netherlands assumed responsibility for Taylor’s in-country transportation in areas outside of the ICC’s jurisdiction and the United Kingdom offered to provide detention facilities if required. Perhaps in light of these concerns, the practice of states employing universal jurisdiction to try offenders for crimes committed outside their borders is cautiously heralded by the text as a promising alternative and as a means of provoking the state in question to become involved domestically.\(^6\)

Chapter 9 considers international criminal tribunals, including; Nuremberg, the ICTY, the ICTR, the ICC and various hybrid tribunals such as the Special Court for Sierra Leone. The analysis is an informative historical review of the accomplishments and shortcomings of these bodies, which the authors view as a useful alternative when a remedy through national justice is not feasible. A point that the authors overlook is that these bodies are particularly sensitive when former colonial states are involved. The ICC Prosecutor’s decision to indict only African leaders and rebels to date is justified as the Court must use its limited resources to target the world’s most heinous criminals. Yet moving off the continent will silence critics who claim it is nothing more than Western meddling in African affairs and will demonstrate to other rogue states and non-state actors (in countries such as Sri Lanka and Myanmar) that they too are not exempt from justice. The authors rightly regard blanket amnesties as forms of impunity to be avoided wherever possible, though in the case of Uganda their reasoning is mostly grounded in international legal obligations rather than a reflection of popular support. Such arguments are likely to ring hollow in the ears of the tribal leaders who propose so-called traditional justice solutions and perhaps President Museveni, who may be eager to court popular support on the subject as he is expected to seek re-election in 2011. Also, while issues of functional immunity for current government officials is discussed in a previous chapter, here the authors mention Sudanese President Omar al-Bashir’s charge of crimes against humanity and war crimes before the ICC. Yet they fail to offer any insights on the best way for the international community to handle such a case practically (for example, by placing pressure on African Union (AU) states to arrest Bashir on a State visit or by deploying UN peacekeepers to make the arrest). Nor do they discuss what his capture and indictment (or lack of) could mean for our understanding of individual accountability.

It is clear that the authors believe in the power of legal responses to accountability. Still they also recognise the potential drawbacks of bringing these issues to the legal realm where, for example, justice systems are weak and the collection of physical evidence is difficult. Chapter 10 examines the non-prosecutorial options of investigatory commissions, civil suits, immigration measures and lustration. Typically, international law texts have difficulty handling such options, particularly investigatory commissions. While the book is somewhat adept at this, there is still some confusion. The authors suggest that investigatory commissions are useful when resources are lacking but also recognise that they are not an adequate substitute for criminal liability for the worst atrocities and can block rather than fuel national reconciliation (one of its stated goals put forth in the chapter). Finally, Chapter 11 offers an introduction to evidence and judicial assistance in international law. The evidentiary standards used in the ICTY, ICTR and ICC, known as the ‘flexible approach,’ are briefly discussed. This is accompanied by an overview of the political challenges of obtaining evidence and extraditions across national and international processes. The chapter’s twelve pages read a bit thinly. Readers interested in these topics will have to go further.

\(^6\) Ratner et al., p.207.
The sum of the above provides a convincing case against those seeking to claim the superiority of a single method of accountability. Rather than simply providing a descriptive account of the various forms available, the authors work towards developing a modus operandi for determining which system could be most useful. The book takes into consideration those social, political and financial factors that will inform a state’s decision and the broad goals that each method tries to achieve. Criminal proceedings lead to punishment and deterrence. Investigatory commissions (such as truth commissions) publicly acknowledge offences and facilitate transitions between powers or political systems. Civil proceedings can result in financial compensation. The authors do recognise that the goals are somewhat overlapping and, of course, that there is no guarantee that simply implementing the system will result in their achievement. Still, this provides important practical considerations, useful to policy makers and analysts who rightfully demand this kind of comprehensive analysis from legal scholars.

The case study described in Part III, which is the innovation of the Third Edition, seeks to examine the potential means for bringing to justice the Khmer Rouge for atrocities committed over thirty years ago in Cambodia. The detailed historical background and description of the atrocities in Chapter 12 illustrates that it is possible to collect accounts of abuses long after the fact even when a culture of impunity prevails. Moreover, the book provides a complete list of names of the Khmer Rouge’s leadership, likely to demonstrate the breadth of information (and thus evidence) available but also to participate in the process of naming and shaming. Chapter 13 posits the challenges and opportunities associated with applying international criminal law to the case. The authors show that a strong argument can be made that the Khmer Rouge’s actions amount to grave breaches of the Geneva Conventions, acts of genocide towards the Cham minority group and ethnic Vietnamese, Chinese and Thais and Buddhist monks, and crimes against humanity, particularly if the nexus to armed conflict is dropped for the latter. However heinous, the killings of the Khmer people that took place in Cambodia are not likely to meet the definition of genocide and the determination of whether torture was a jus cogens norm in 1975 will require some debate. Particularly complex would be prosecution under Cambodia’s national justice system as regimes have frequently changed without updating the criminal code. Cambodia’s options for accountability are discussed in Chapter 14 as are the antecedents to the Establishment of Extraordinary Chambers in the Courts of Cambodia (ECCC). Given the authors’ previous assertion that a state need not stop at one method of accountability, their discussion of Cambodia’s other options proves interesting. Noteworthy is their contention that an investigatory commission could positively work in tandem with the ECCC to ensure the quick collection of a coherent record of the abuses. However, the authors acknowledge that several factors, including the Cambodian people’s lack of familiarity with the purpose of truth commissions and the continuation of an authoritarian rule in that country could reduce its effectiveness. Regardless of the methods used, it is clear that to be successful Cambodia must be provided with international support to mitigate the country’s lack of a fair and effective judiciary.

One main criticism of the book is all too common to international human rights texts. Readers looking for thoughtful analysis of the nexus between international criminal law and gender will be disappointed. The book does provide the basic 101 level understanding of how ICTY and

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7 Ratner et al., p.322.
8 Ratner et al., p.331.
9 Ratner et al., p.354.
10 Ratner et al., pp.354-355.
ICTR jurisprudence have broadened the scope of atrocities to include crimes of sexual violence, but a more detailed discussion is lacking. Disappointingly, the case study on Cambodia also fails to discuss the Khmer Rouge’s treatment of women and what accountability could mean for female victims. Additionally, the authors fail to acknowledge the pertinence of a point made in the book during the discussion of the different justice offered by the national systems in Rwanda and the ICTR. While Rwandans found guilty of crimes at home serve their time in deplorable prison conditions, those found guilty at the ICTR are incarcerated in countries whose prisons meet international standards. Moreover, though Rwanda has since revoked the death penalty, several hundred Rwandans tried at home were executed while the ICTR has never permitted capital punishment. Clearly, such two-faced justice must not be repeated in Cambodia. Yet where different systems of accountability are applied to the same situation such vast discrepancies are possible.

In the conclusion the book cautiously mentions the 2005 General Assembly Resolution on the Responsibility to Protect which has opened the door to new possibilities for preventing the commission of atrocities. Though perhaps dwarfed by the scope and spread of atrocities, such successes over the past decade are small victories for advocates and victims groups. Yet the authors recognise that the sum of these achievements may not be enough. Certainly there is a risk that the post 9-11 emphasis on security over human rights and the rising powers of countries with little historical regard for international legal norms (such as China and India) will thwart the gains made since Nuremberg in the coming decades. The book leaves the reader with a general feeling that all is not well in the realm of international criminal law. As the authors have documented in other writings, the inconsistent nature of that law can be a source of frustration to human rights advocates and, most importantly, to victims. Those pursuing accountability may have little understanding (or regard) for the historical and political factors that have created this ‘patch work’ system or the financial or political constraints that could delay or prevent accountability for those culpable. The disjuncture between the goals of accountability and the reality is large. This excellent book provides a measure of this distance and cautiously puts forth a course that could close the gap.

11 Ratner et al., p. 226, 228.
12 Ratner et al., p. 195.