

SECOND EDITION

# AN INTRODUCTION TO **International Criminal Law AND Procedure**

Robert Cryer  
Håkan Friman  
Darryl Robinson  
Elizabeth Wilmshurst

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## **An Introduction to International Criminal Law and Procedure**

This market-leading textbook gives an authoritative account of international criminal law, and focuses on what the student needs to know – the crimes that are dealt with by international courts and tribunals as well as the procedures that police the investigation and prosecution of those crimes. The reader is guided through controversies with an accessible, yet sophisticated, approach by the author team of four international lawyers with experience of teaching the subject, and as negotiators at the foundation of the International Criminal Court (ICC) and the Rome Conference. It is an invaluable introduction for all students of international criminal law and international relations, and now covers developments in the ICC and victims' rights alternatives to international criminal justice. The book is supplemented by an extensive package of online resources ([www.cambridge.org/law/cryer](http://www.cambridge.org/law/cryer)), which offers convenient access to primary sources, well-chosen excerpts for supplementary reading, problems and questions for reflection and discussion, and materials for exercises and simulations.

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# Preface to the Second Edition

Our intention for this second edition is the same as it was for the first: to provide an accessible yet challenging explanation and appraisal of international criminal law and procedure for students, academics and practitioners. We focus on the crimes which are within the jurisdiction of international courts or tribunals – genocide, crimes against humanity, war crimes and aggression – and the means of prosecuting them. We also briefly discuss terrorist offences, torture, and other crimes which are not (yet) within the jurisdiction of an international court or tribunal.

International criminal law is now a vast subject, even in our circumscribed view of what it contains. This book is intended as a manageable and useful introduction to the field, and therefore does not attempt to delve into the entirety of the subject in the full detail it deserves. We welcome comments on possible improvements that could be made, and are grateful for those that we received on the first edition. We have sought to be succinct rather than simplistic in our presentation. We have included references to academic commentary, both in the footnotes and in ‘further reading’ sections at the end of each chapter. However, there is a great deal of writing on international criminal law, and we could not refer to it all. We hope that this book piques the interest of those new to the subject to further investigations including into the considerable and insightful literature which the developments in international criminal law have engendered.

While we hope that this book will appeal to practitioners as well as to students, the chapters are intended to cover the subjects which can be dealt with during a university Masters course in international criminal law. Part A is introductory. Following a discussion in [Chapter 1](#) of what we mean by international criminal law and of some of its most fundamental principles, we consider in [Chapter 2](#) the objectives of this body of law. Part B is concerned with prosecutions in national, rather than international, courts. [Chapter 3](#) discusses the principles of jurisdiction as they relate to international crimes, [Chapter 4](#) describes some instances of national prosecutions and [Chapter 5](#) concerns extradition, transfer of information and other means by which States cooperate to assist in bringing suspects to justice before national courts. Part C, which concerns international prosecutions, begins in [Chapter 6](#) with a history of the trials following the Second

World War and [Chapters 7](#) and [8](#) respectively discuss the ad hoc Tribunals and the International Criminal Court. [Chapter 9](#) describes in brief other courts with an international element which have been established to investigate and prosecute international crimes. Part D discusses the substantive law of international crimes. [Chapters 10](#) to [13](#) cover genocide, crimes against humanity, war crimes and aggression; [Chapter 14](#) introduces the subject of ‘transnational’ crimes, and takes as examples terrorist offences and torture. [Chapters 15](#) and [16](#) introduce the principles of liability and defences respectively. Part E is concerned with the processes of international prosecutions: [Chapter 17](#) focuses on the procedures, [Chapter 18](#) on the role of victims, and [Chapter 19](#) on sentencing. Part F considers various aspects of the relationship between the national and international systems: State cooperation with the international courts and tribunals (in [Chapter 20](#)) and immunities, in relation to both national and international jurisdictions (in [Chapter 21](#)). Amnesties and other alternatives and complements to prosecutions are considered in [Chapter 22](#). We end with our conclusions in [Chapter 23](#), which contains our assessment of the development of international criminal law and its institutions and our forecast for the future.

The authors have all taught, to a greater or lesser extent, in international criminal law courses. Three of us took part in the negotiations on the International Criminal Court and participated at the Rome Conference. Some of the comments in this book rely directly on our experience in this capacity.

We have all had an input into each chapter. Each of us drafted a number of chapters, which were circulated and commented upon by the other three. Each chapter has been the object of intensive discussion amongst all of us to achieve as much coherence among our views as possible. We have attempted to produce a book which reads as a coherent whole, rather than as a collection of separate papers from different writers. Of course, with four authors, complete consensus on every matter of substance was neither possible nor expected and the views expressed in individual chapters are therefore those of the author of that chapter, and not necessarily of the group as a whole.

In the first edition the responsibility for [Chapters 2, 3, 6, 7, 15](#) and [16](#) rested with Robert Cryer, for [Chapters 4, 5, 9, 17, 18](#) and [19](#) (the latter two now [Chapters 19](#) and [20](#)) with Håkan Friman, for [Chapters 11, 12](#) and [20](#) (now [21](#)) with Darryl Robinson and for [Chapters 8, 10, 13, and 14](#) with Elizabeth Wilmshurst. [Chapters 1](#) and [21](#) (now [23](#)), which express the views of us all, were written by Rob and Elizabeth ([Chapter 1](#)) and by Rob ([Chapter 21\(23\)](#)).

The responsibility for updating has largely remained the same with each person updating their own chapters. The only changes are that Robert has taken over [Chapter 4](#), written [Chapter 22](#) and updated [Chapter 1](#). Håkan has written the chapter on victims (new [Chapter 18](#)), and Elizabeth has taken over [Chapter 9](#). Elizabeth has also had the responsibility of keeping us all together and seeking a consistent text.

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We express particular thanks to Finola O’Sullivan and Sinead Moloney of Cambridge University Press. It would be remiss of us to fail to note the contributions of Professor Claus Kreß and Charles Garraway to the conceptualization of the first edition. We remain grateful to them.

*Robert Cryer*  
*Håkan Friman*  
*Darryl Robinson*  
*Elizabeth Wilmshurst*  
*January 2010*

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# Table of Abbreviations

A. Ch.	Appeals Chamber
ACHPR	African Charter of Human and People's Rights
ACHR	American Convention on Human Rights
AJIL	<i>American Journal of International Law</i>
All ER	All England Reports
AP	Additional Protocol to the Geneva Conventions
ASEAN	Association of Southeast Asian Nations
ASP	Assembly of States Parties to the International Criminal Court
AU	African Union
BFSP	British and Foreign State Papers
BYBIL	<i>British Yearbook of International Law</i>
CARICOM	Caribbean Community
CAT	UN Convention against Torture and other Cruel, Inhuman and Degrading Treatment
CIS	Commonwealth of Independent States
CLF	<i>Criminal Law Forum</i>
CMR	Court Martial Reports
CPA	Coalition Provisional Authority
ECCC	Extraordinary Chambers in the Courts of Cambodia
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECOSOC	UN Economic and Social Council
ECOWAS	Economic Community of West African States
ECtHR	European Court of Human Rights
EJIL	<i>European Journal of International Law</i>
EOC	Elements of Crime
ETS	European Treaty Series
EU	European Union
FRY	Federal Republic of Yugoslavia
F. Supp.	Federal Supplement
GA	General Assembly
GC	Geneva Convention

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<i>Hague Recueil</i>	<i>Recueil des cours de l'Academie de droit international</i>
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Court of Justice
ICLQ	<i>International and Comparative Law Quarterly</i>
ICLR	<i>International Criminal Law Review</i>
ICRC	International Committee for the Red Cross and Red Crescent
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IFOR	Implementation Force (NATO)
IGC	Interim Governing Council
IHL	international humanitarian law
ILC	International Law Commission
ILM	International Legal Materials
ILR	International Law Reports
IMT	International Military Tribunal
JICJ	<i>Journal of International Criminal Justice</i>
KFOR	(NATO) Kosovo Force
LJIL	<i>Leiden Journal of International Law</i>
LNTS	League of Nations Treaty Series
London Charter/ Nuremberg Charter	Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis
LRA	Lord's Resistance Army
LRTWC	Law Reports, Trials of War Criminals
MONUC	UN Organization Mission in the Democratic Republic of the Congo
NJIL	<i>Nordic Journal of International Law</i>
OAS	Organization of American States
OAU	Organization of African Unity
OHR	Office of the High Representative
OIC	Organization of the Islamic Conference
OJ	Official Journal
OSCE	Organization for Security and Cooperation in Europe
OTP	Office of the Prosecutor
PAUTS	Pan-American Union Treaty Series
PCIJ	Permanent Court of International Justice
PT. Ch.	Pre-Trial Chamber
RPE	Rules of Procedure and Evidence
SAARC	South Asian Association for Regional Cooperation
SADC	Southern African Development Community
SC	Security Council
SCR	Supreme Court Reports
SCSL	Special Court for Sierra Leone
SFOR	Stability Force (NATO-led force deployed in Bosnia)
SICT	Supreme Iraqi Criminal Tribunal

SOFA	Status of forces agreement
STL	Special Tribunal for Lebanon
T. Ch.	Trial Chamber
UKTS	United Kingdom Treaty Series
UN	United Nations
UNAMID	African Union/United Nations Hybrid operation in Darfur
UNMIK	UN Interim Administration Mission in Kosovo
UNTAES	United Nations Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium
UNTAET	United Nations Transitional Administration in East Timor
UNTS	United Nations Treaty Series
WTO	World Trade Organization
YIHL	<i>Yearbook of International Humanitarian Law</i>
ZaöRV	<i>Zeitschrift für ausländisches öffentliches Recht und Völkerrecht</i>

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# **PART A**

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## **Introduction**