

An Introduction to
International
Criminal Law
and Procedure



CAMBRIDGE

Robert Cryer, Hakan Friman
Darryl Robinson, Elizabeth Wilmshurst

CAMBRIDGE

www.cambridge.org/9780521876094

This page intentionally left blank

An Introduction to INTERNATIONAL CRIMINAL LAW AND PROCEDURE

International criminal law has developed considerably in the last decade and a half, resulting in a complex and re-invigorated discipline. This has impacted directly on the popularity of the study of the subject, particularly on postgraduate law degrees. This textbook serves these courses by providing an introduction to the principles of international criminal law and processes. Written by four international lawyers with experience of teaching international criminal law, it is accessible yet sophisticated in its approach. It covers substantive international criminal law, the institutions designed to enforce it and their procedures, and the international law applicable to domestic prosecutions of international crimes. It will be essential reading for students and teachers of international criminal law. In addition to practitioners and researchers in the field, and in related fields such as criminal law, students of international law and international relations will find this introduction invaluable.

ROBERT CRYER is Professor of International and Criminal Law at the University of Birmingham.

HÅKAN FRIMAN is Honorary Professor at University College London.

DARRYL ROBINSON is an Adjunct Professor at the University of Toronto, Faculty of Law.

ELIZABETH WILMSHURST is a Senior Fellow at Chatham House and Visiting Professor at University College London.

AN INTRODUCTION TO INTERNATIONAL CRIMINAL LAW AND PROCEDURE

ROBERT CRYER
HÅKAN FRIMAN
DARRYL ROBINSON
ELIZABETH WILMSHURST



CAMBRIDGE
UNIVERSITY PRESS

CAMBRIDGE UNIVERSITY PRESS

Cambridge, New York, Melbourne, Madrid, Cape Town, Singapore, São Paulo

Cambridge University Press

The Edinburgh Building, Cambridge CB2 8RU, UK

Published in the United States of America by Cambridge University Press, New York

www.cambridge.org

Information on this title: www.cambridge.org/9780521876094

© Robert Cryer, Hakan Friman, Darryl Robinson and Elizabeth Wilmshurst 2007

This publication is in copyright. Subject to statutory exception and to the provision of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press.

First published in print format 2007

ISBN-13 978-0-511-28718-3 eBook (Adobe Reader)

ISBN-10 0-511-28718-6 eBook (Adobe Reader)

ISBN-13 978-0-521-87609-4 hardback

ISBN-10 0-521-87609-5 hardback

ISBN-13 978-0-521-69954-9 paperback

ISBN-10 0-521-69954-1 paperback

Cambridge University Press has no responsibility for the persistence or accuracy of urls for external or third-party internet websites referred to in this publication, and does not guarantee that any content on such websites is, or will remain, accurate or appropriate.

Contents

<i>Preface</i>	<i>page xi</i>
<i>Table of Cases</i>	<i>xiv</i>
<i>Table of Treaties</i>	<i>xxxv</i>
<i>Table of Abbreviations</i>	<i>xlii</i>
Part A Introduction	1
1 Introduction: What is International Criminal Law?	1
1.1 International criminal law	1
1.2 Other concepts of international criminal law	3
1.3 Sources of international criminal law	6
1.4 International criminal law and other areas of law	9
1.5 A body of criminal law	12
2 The Objectives of International Criminal Law	17
2.1 Introduction	17
2.2 The aims of international criminal justice	18
2.3 Alternatives and complements to criminal prosecution	30
Part B Prosecutions in National Courts	37
3 Jurisdiction	37
3.1 Introduction	37
3.2 The forms of jurisdiction	37
3.3 Conceptual matters	39
3.4 The ‘traditional’ heads of jurisdiction	40
3.5 Universal jurisdiction	44
4 National Prosecutions of International Crimes	54
4.1 Introduction	54
4.2 National prosecutions	54
4.3 State obligations to prosecute or extradite	58
4.4 Domestic criminal law and criminal jurisdiction	61
4.5 Statutory limitations	64
4.6 Principle of non-retroactivity	66
4.7 <i>Ne bis in idem</i> or double jeopardy	67
4.8 Practical obstacles to national prosecutions	69

5	State Cooperation with Respect to National Proceedings	71
5.1	Introduction	71
5.2	International agreements	72
5.3	Some basic features	73
5.4	Extradition	79
5.5	Mutual legal assistance	86
5.6	Transfer of proceedings	88
5.7	Enforcement of penalties	88
Part C	International Prosecutions	91
6	The History of International Criminal Prosecutions: Nuremberg and Tokyo	91
6.1	Introduction	91
6.2	The Commission on the Responsibility of the Authors of the War	91
6.3	The Nuremberg International Military Tribunal	92
6.4	The Tokyo International Military Tribunal	96
6.5	Control Council Law No. 10 trials and military commissions in the Pacific sphere	100
7	The ad hoc International Criminal Tribunals	102
7.1	Introduction	102
7.2	The International Criminal Tribunal for Yugoslavia	102
7.3	The International Criminal Tribunal for Rwanda	112
8	The International Criminal Court	119
8.1	Introduction	119
8.2	The creation of the ICC	119
8.3	Structure and composition of the ICC	124
8.4	Crimes within the jurisdiction of the ICC	125
8.5	Complementarity	127
8.6	Initiation of proceedings (the 'trigger mechanisms')	133
8.7	Jurisdiction: personal, territorial and temporal	135
8.8	Deferral of investigation or prosecution	138
8.9	Enforcement of the ICC's decisions	139
8.10	Opposition to the ICC	139
8.11	Early developments at the ICC	145
9	Other Courts with International Elements	149
9.1	Introduction	149
9.2	Courts established by agreement between the United Nations and a State	150
9.3	Courts established by the United Nations or other international administration	155
9.4	Courts established by a State with international support	160

9.5	Lockerbie: an ad hoc solution for a particular incident	162
9.6	Relationship to the ICC	162
Part D	Substantive Law of International Crimes	165
10	Genocide	165
10.1	Introduction	165
10.2	The protected groups	169
10.3	Material elements	174
10.4	Mental elements	179
10.5	Other acts	185
11	Crimes Against Humanity	187
11.1	Introduction	187
11.2	Common elements (the contextual threshold)	191
11.3	Prohibited acts	200
12	War Crimes	221
12.1	Introduction	221
12.2	Common issues	232
12.3	Specific offences	241
13	Aggression	262
13.1	Introduction	262
13.2	State responsibility for unlawful use of force	267
13.3	Material elements	271
13.4	Mental elements	274
13.5	Prosecution of aggression in the ICC	275
14	Transnational Crimes, Terrorism and Torture	281
14.1	Introduction	281
14.2	Terrorism	283
14.3	Torture	294
Part E	Principles and Procedures of International Prosecutions	301
15	General Principles of Liability	301
15.1	Introduction	301
15.2	Perpetration/commission	302
15.3	Joint criminal enterprise	304
15.4	Aiding and abetting	310
15.5	Ordering, instigating, soliciting, inducing and inciting	312
15.6	Planning, preparation, attempt and conspiracy	316
15.7	Mental elements	318
15.8	Command/superior responsibility	320
16	Defences/Grounds for Excluding Criminal Responsibility	331
16.1	Introduction	331
16.2	The ICC Statute and defences	332
16.3	Mental incapacity	333

16.4	Intoxication	335
16.5	Self-defence, defence of others and of property	337
16.6	Duress and necessity	339
16.7	Mistake of fact and law	341
16.8	Superior orders	342
16.9	Other ‘defences’	346
17	Procedures of International Criminal Investigations and Prosecutions	349
17.1	International criminal procedures	349
17.2	International criminal proceedings and human rights	353
17.3	Actors in the proceedings and their roles	359
17.4	Jurisdiction and admissibility procedures	364
17.5	Commencement and discontinuance of a criminal investigation	365
17.6	The criminal investigation	366
17.7	Coercive measures	368
17.8	Prosecution and indictment	373
17.9	Pre-trial proceedings – preparations for trial	378
17.10	Evidentiary rules	382
17.11	Admission of guilt, guilty pleas, plea-bargaining	384
17.12	Trial and judgment	386
17.13	Appeals proceedings	388
17.14	Revision	390
17.15	Offences against the administration of justice	391
18	Sentencing, Penalties and Reparations to Victims	393
18.1	International punishment of crimes	393
18.2	Purposes of sentencing	395
18.3	Sentencing practice	396
18.4	Reparations to victims	400
18.5	Sentencing procedures	400
18.6	Pardon, early release and review of sentence	401
18.7	Enforcement	401
Part F	Relationship Between National and International Systems	405
19	State Cooperation with the International Courts and Tribunals	405
19.1	Characteristics of the cooperation regimes	405
19.2	Obligation to cooperate	406
19.3	Non-States Parties and international organizations	410
19.4	Non-compliance	412
19.5	Cooperation and the ICC complementarity principle	412
19.6	Authority to seek cooperation and defence rights	413
19.7	Arrest and surrender	414

19.8	Other forms of legal assistance	416
19.9	Domestic implementation	419
19.10	An assessment	420
20	Immunities	422
20.1	Introduction	422
20.2	Functional immunity	428
20.3	Affirmation of personal immunity before national courts	434
20.4	Relinquishment of personal immunity in international courts	438
20.5	Conclusion	444
21	Conclusions: The Future of International Criminal Law	446
21.1	Introduction	446
21.2	International courts and tribunals	446
21.3	Developments in national prosecutions of international crimes	447
21.4	The trend towards accountability	449
21.5	The development of international criminal law	451
21.6	The path forward (or back?)	453
	<i>Index</i>	456

Preface

With the start of the first prosecutions by the International Criminal Court and the closing phases of the work of the ad hoc Tribunals, this is a good time for a new book on international criminal law and its institutions. This book is intended as 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 on 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. We have sought to be succinct rather than simplistic in our presentation. We have included some 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: do they differ from those of national law, for example? 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. Part E is concerned with the principles (in Chapters 15 and 16) and the procedures (in Chapters 17 and 18) used in international prosecutions. Part F considers various aspects of the relationship between the national and international systems: State cooperation with the international courts and tribunals (in Chapter 19) and immunities, in relation to both national and international jurisdictions (in Chapter 20). We end with our conclusions in Chapter 21, which contains our assessment of the development of international criminal law and its institutions and our forecast for the future.

The website which accompanies this book provides access to documents to which reference is most frequently made and material which may be useful in teaching. It also sets out questions which invite the reader to engage in further reflection and discussion of various issues in each of the chapters of the book.

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. The responsibility for Chapters 2, 3, 6, 7, 15 and 16 rests with Robert Cryer, for Chapters 4, 5, 9, 17, 18 and 19 with Håkan Friman, for Chapters 11, 12 and 20 with Darryl Robinson and for Chapters 8, 10, 13, and 14 with Elizabeth Wilmshurst. Chapters 1 and 21, which express the views of us all, were written by Rob and Elizabeth (Chapter 1) and by Rob (Chapter 21). Elizabeth has also had the responsibility of keeping us all together and seeking a consistent text.

We express particular thanks to Finola O’Sullivan and Sinead Moloney of Cambridge University Press; to Professor Claus Kress who gave his wise advice and substantial contributions to the conceptualization and development of this book and to Charles Garraway, for his contributions, including in particular to the section on command responsibility.

Robert Cryer
Håkan Friman
Darryl Robinson
Elizabeth Wilmshurst
October 2006

Table of Cases

ICJ

- Application for Revision of the Judgment of 11 July 1996 in the Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia)*, Preliminary Objections (*Yugoslavia v. Bosnia and Herzegovina*) Judgment of 3 February 2003, ICJ General List 122 107
- Application of the Convention on the Prevention and Punishment of Genocide (Bosnia and Herzegovina v. Yugoslavia)* Preliminary Objections (1996) ICJ Rep 616 59
- Barcelona Traction, Light and Power Company Limited (Belgium v. Spain)* (Second phase) Judgment 5 February 1970 ICJ Rep 4 60
- Case concerning Armed Activities on the Territory of the Congo (Democratic Republic of Congo v. Rwanda)* Jurisdiction of the Court and Admissibility of the Application Judgment of 3 February 2006, ICJ General List 126 166
- Case concerning Armed Activities on the Territory of the Congo (Democratic Republic of Congo v. Uganda)* Merits (2005) ICJ General List 116 95, 264, 268, 269
- Case concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. USA)* Merits (1986) ICJ Rep 14 235, 264, 268, 269, 278
- Case concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. USA)* Jurisdiction and Admissibility (1984) ICJ Rep 392 106
- Case concerning the Arrest Warrant of 11 April 2000 (Democratic Republic of Congo v. Belgium)* (2002) ICJ Rep 3 3, 39, 44, 45, 48, 49, 52, 151, 427, 430, 433, 435–7, 444, 448
- Case concerning the Legality of Use of Force (Serbia and Montenegro v. United Kingdom)* 15 December 2004 410
- Certain Expenses of the United Nations* (1962) ICJ Rep 151 106
- Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights*, Advisory Opinion (1999) ICJ Rep 100 427
- Effect of Awards of Compensation Made by the United Nations Administrative Tribunal* (1954) ICJ Rep 47 107
- Judgments of the Administrative Tribunal of the International Labour Organization upon Complaints made against the United Nations Educational, Scientific and Cultural Organization*, Advisory Opinion (1956) ICJ Rep 77

- Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (2004) ICJ Rep 36 95, 269
- Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion (1996) ICJ Rep 226 247, 250, 255–6
- Nottebohm (*Liechtenstein v. Guatemala*) (1955) ICJ Rep 4 41
- Oil Platforms (Islamic Republic of Iran v. USA)* Judgment of 12 December 1996, ICJ General List 90 269
- Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie (Libya v. US, Libya v. UK)* (1992) ICJ Rep 114 105
- Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, Advisory Opinion (1951) ICJ Rep 15 166, 167
- United States Diplomatic and Consular Staff in Iran (US v. Iran)* Merits (1980) ICJ Rep 3 426

PCIJ

- Jurisdiction of the Courts in Danzig* case (1928) PCIJ Series B, No. 15, p. 17
- SS Lotus (France v. Turkey)* (1927) PCIJ Series A, No. 10 39, 42

IMTs

- Goering* (1946) (International Military Tribunal (Nuremberg) Judgment and Sentences), reprinted in (1947) 41 *AJIL* 172 5, 13, 26, 64, 94, 96, 216, 225, 228, 263, 304, 316, 388, 393, 432, 438
- Judgment of the Tokyo IMT, transcribed in R. J. Pitchard and S. M. Zaide (eds.) *The Tokyo War Crimes Trial* (New York 1981) vols. 20 and 21 13, 22, 26, 64, 99, 263, 304, 316, 388, 393, 438

Other court decisions immediately following the Second World War (also listed under the relevant State below)

- Altstötter (Josef) et al.* (Justice Trial) VI LRTWC 1 191, 196, 224, 246
- Chusaburo* III LRTWC 76 335
- Flick* IX LRTWC 1 191, 339
- Gerbsch* XIII LRTWC 131 334
- Heyer (Erich)* (the Essen Lynching Trial) I LRTWC 88 239
- Karl Brandt and others* (The Doctors' Trial) IV LRTWC 91 196, 212, 323
- Krauch and others* (I.G. Farben) X LRTWC 1 272, 339
- Krupp and others* X LRTWC 69 272, 339, 340
- List and others* (The Hostages case) VIII LRTWC 1 223, 323
- Masuda and others* (The Jaluit Atoll case) I LRTWC 71 302

- Meyer* (Abbaye Ardenne case) IV LRTWC 97 315
- Peleus* case, 13 ILR 248
- Rohrig, Brunner and Heinze* (1950) 17 ILR 393 43
- Sandrock (Otto)* (The Almelo case) I LRTWC 35 305
- Tesch and others* (The Zyklon B case) I LRTWC 93 45, 239, 310
- Tessmann (Willi)* case, cited at XV LRTWC 177 337–8
- Von Falkenhorst* XI LRTWC 18. 313
- Von Leeb and others* (The High Command case) XII LRTWC 1 225, 228, 271, 339
- US v. Ernst von Weizsäcker et al.* (The Ministries case) (*Trials of War Criminals before the Nuernberg Military Tribunals*) United States Government Printing Office vol. XIV; 14 TWC 1 191, 274
- Washio Awochi* XII LRTWC 122 43
- Yamashita* 327 US 1 100, 321

ICTY

- In re: The Republic of Macedonia* (Case No. IT-02-55)
- Decision on the Prosecutor's Request for Deferral and Motion for Order to the Former Yugoslav Republic of Macedonia, IT-02-55-Misc.6, T. Ch. I 4.10.2002 104
- Prosecutor v. Aleksovski* (Case No. IT-95-14/1)
- Decision on Prosecutor's Appeal on Admissibility of Evidence, IT-95-14/1-AR73, A. Ch. 16.2.1999 384
- Judgment, IT-95-14/1-T, T.Ch. *Ibis* 25.6.1999 224, 319, 323
- Judgment, IT-95-14/1-A, A.Ch. 24.3.2000 9, 18, 19, 104, 311, 377
- Prosecutor v. Babić* (Case No. IT-03-72)
- Judgment on Sentencing Appeal, IT-03-72-A, A.Ch. 18.7.2005 385, 399
- Prosecutor v. Blagojević and Jokić* (Case No. IT-02-60)
- Decision, IT-02-60-AR73, A.Ch. 8.4.2003 382
- Judgment, IT-02-60-T, T. Ch. IA 17.1.2005 180, 306, 308, 310, 330
- Prosecutor v. Blaškić* (Case No. IT-95-14, IT-95-14/1)
- Decision on the Objection of the Republic of Croatia to the Issuance of Subpoena Duces Tecum, IT-95-14-PT, T.Ch. II 18.7.1997 352, 406, 419
- Judgment on the Request of the Republic of Croatia for Review of the Decision of Trial Chamber II of 18 July 1997, IT-95-14/1, A. Ch. 29.10.1997 60, 352, 363, 367, 369, 405, 407, 409, 412, 416–17, 433
- Judgment, IT-95-14/1-T, T.Ch. I, 3.3.2000 42, 195–219, 243, 246–7, 258, 319, 322–9, 397
- Judgment, IT-95-14-A, A.Ch. 29.7.2004 193–9, 310, 375, 378, 381–2, 389, 397–9, 401
- Prosecutor v. Bobetko* (Case No. IT-02-62)
- Decision on Challenge by Croatia to Decision and Orders of Confirming Judge, IT-02-62-AR54bis & IT-02-62-AR108bis, A.Ch. 29.11.2002 363

Prosecutor v. Boškoski and Tarčulovski (Case No. IT-04-82)

Decision on Interlocutory Appeal on Jurisdiction, IT-04-82-AR72.1, A.Ch. 22.7.2005 390

Prosecutor v. Brdjanin and Talić (Case No. IT-99-36)

Decision on Petition for a Writ of Habeas Corpus on behalf of Radislav Brdjanin, IT-99-36, T.Ch. II 8.12.1999 371–2

Decision on Motion for Release, IT-99-36, T.Ch. II 10.12.1999 371

Decision on Motion by Radoslav Brdjanin for Provisional Release, IT-99-36-PT, T.Ch. II 25.7.2000 370

Decision on Objections by Momir Talić to the Form of the Amended Indictment, IT-99-36-PT, T.Ch. II 20.2.2001 375

Order on the Standards Governing the Admission of Evidence, IT-99-36-T, T.Ch. II 15.2.2002 383

Decision on Motion to Set Aside Confidential Subpoena to Give Evidence, IT-99-36-T, T.Ch. II 7.6.2002 362

Decision on Interlocutory Appeal, IT-99-36-AR73.9, A.Ch. 11.12.2002 362

Decision on Interlocutory Appeal, IT-99-36-A, A.Ch. 19.3.2004 309

Judgment, IT-99-36-T, T.Ch. II 1.9.2004 (Brdjanin) 176, 306, 356, 384, 396

Čelebići case: Prosecutor v. Delalić, Mučić, Delić and Landžo (Case No. IT-96-21)

Decision on Motion For Provisional Release filed by the Accused Zejnil Delalić, IT-96-21-PT, T.Ch. II 25.9.1996 371

Decision on the Motion by the Accused Zejnil Delalić based on defects in the form of the indictment, IT-96-21-PT, T.Ch. II 2.10.1996 377

Decision on the Motions by the Prosecution for Protective Measures for the Prosecution Witnesses Pseudonymed ‘B’ through to ‘M’, IT-96-21-T, T.Ch. II *quater* 28.4.1997 354

Decision on the Motion on Presentation of Evidence by the Accused, Esad Landžo, IT-96-21-T, T.Ch. II *quater* 1.5.1997 351, 353

Decision on the Motion *ex parte* by the Defence of Zdravko Mučić Concerning the Issue of a Subpoena to an Interpreter, IT-96-21-T, T.Ch. II *quater* 8.7.1997 362

Decision on Zdravko Mučić’s Motion for the Exclusion of Evidence, IT-96-21-T, T.Ch. II *quater* 2.9.1997 368, 372

Judgment, IT-96-21-T, T.Ch. II 16.11.1998 201, 206, 207, 243–4, 296–7, 302, 322–7

Order on the Motion to Withdraw as Counsel Due to Conflict of Interest, IT-96-21-A, A.Ch. 24.6.1999 352

Judgment, IT-96-21-A, A.Ch. 20.2.2001 319, 323–4, 334, 357, 374, 377, 387, 394, 396–401

Decision on Motion for Review, IT-96-21-R-R119, A.Ch. 25.4.2002 (Delić) 391

Judgment on Sentence Appeal, IT-96-21-A, A.Ch. 8.4.2003 389

Prosecutor v. Deronjić (Case No. IT-02-61)

Judgment on Sentencing Appeal, IT-02-61-A, A.Ch. 20.7.2005 385

Prosecutor v. Dokmanović (Case No. IT-95-13a)

Decision 22.10.1997, see *Mrkšić et al.* 10, 373, 411

Order, IT-95-13a-PT, T.Ch. II 28.11.1997

Prosecutor v. Erdemović (Case No. IT-96-22)

Sentencing Judgment, IT-96-22-T, T.Ch. I 29.11.1996 396, 400

Judgment, IT-96-22-A, A.Ch. 7.10.1997 8, 339–40, 353, 385, 388–9, 397

Sentencing Judgment, IT-96-22-Ibis, T. Ch. II 5.3.1998 22

Prosecutor v. Furundžija (Case No. IT-95-17/1)

Judgment, IT-95-17/1-T, T.Ch. II 10.12.1998 8, 11, 60, 65, 126, 207, 209, 294, 297, 304, 311, 381, 432

Judgment, IT-95-17/1-A, A.Ch. 21.7.2000 355, 389, 396

Order of the President on the Application for the Early Release of Anto Furundžija, IT-95-17/1, President 29.7.2004 401

Prosecutor v. Galić (Case No. IT-98-29)

Judgment, IT-98-29-T, T. Ch. I 5.12.2003 7, 226, 248, 252, 293–4

Prosecutor v. Hadžihasanović, Alagić and Kubura (Case No. IT-01-47)

Decision on Interlocutory Appeal Challenging Jurisdiction in Relation to Command Responsibility, IT-01-47-AR72, A. Ch. 16.7.2003 126, 320–1, 323–9

Prosecutor v. Halilović (Case No. IT-01-48)

Decision on Interlocutory Appeal Concerning Admission of Record of Interview of the Accused from the Bar Table, IT-01-48-AR73.2, A.Ch. 19.8.2005 368

Judgment, IT-01-48-T, T. Ch. I 16.11.2005 310, 324–9

Prosecutor v. Janković and Stanković (Case No. IT-96-23/2)

Decision on Referral of Case Under Rule 11bis IT-96-23/2-PT Referral Bench 17.5.2005

Decision on Rule 11bis Referral, IT-96-23/2-AR11bis 1, A.Ch. 1.9.2005 159

Prosecutor v. Jelisić (Case No. IT-95-10)

Decision on Communication between Parties and Witnesses, IT-95-10-T, T.Ch. I 11.12.1998 362

Judgment, IT-95-10-T, T.Ch. I 14.12.1999 168, 169, 173, 201, 334

Judgment, IT-95-10-A, A.Ch. 5.7.2001 169, 181, 385

Prosecutor v. Jokić (Case No. IT-01-42, IT-01-42/1)

Sentencing Judgment, IT-01-42/1-S, T.Ch. I 18.3.2004 28, 398

Judgment on Sentencing Appeal, IT-01-42/1-A, A.Ch. 30.8.2005 398

Prosecutor v. Karadžić and Mladić (Cases No. IT-95-5 and IT-95-18)

Transcript of Hearing IT-95-18-R61, T. Ch. I 27.6.1996 168

Review of the Indictments Pursuant to Rule 61 of the Rules of Procedure and Evidence, IT-95-5-R61 and IT-95-18-R61, T. Ch. I 11.7.1996 175, 365, 379, 406

Prosecutor v. Kordić and Čerkez (Case No. IT-95-14/2) 7

Order on Admissibility of State Request for Review of Order to the Republic of Croatia for the Production of Documents Issued by Trial Chamber III on

- 4 February 1999 and Request for Suspension of Execution of Order, IT-95-14/2, A.Ch. 26.3.1999 363
- Decision Stating Reasons for the Trial Chamber's Ruling of 1 June 1999 Rejecting Defence Motion to Suppress Evidence, IT-95-14/2, T.Ch. III 25.6.1999 369, 418–19
- Order for the Production of Documents by the European Community Monitoring Mission and Its Member States, IT-95-14/2, T.Ch. III 4.8.2000 411
- Judgment, IT-95-14/2-T, T. Ch. III 26.2.2001 193, 195, 197, 205–6, 213, 216, 243, 247, 313, 337
- Decision on Application by Mario Čerkez for Extension of Time to file his Respondent's Brief, IT-95-14/2-A, A. Ch. (Pre-Appeals Judge) 11.9.2001 358
- Judgment, IT-95-14/2-A, A.Ch. 17.12.2004 7, 23, 239, 249, 313, 358, 378, 389, 396
- Prosecutor v. Kovačević* (Case No. IT-97-24)
- Decision Refusing Defence Motion for Subpoena, IT-97-24-PT, T.Ch. II 23.6.1998 411
- Decision Stating Reasons for Appeal Chamber's Order of 29 May 1998, IT-97-24-AR73, A. Ch. 2.7.1998 375, 416
- Prosecutor v. Vladimir Kovačević* (Case No. IT-01-42/2)
- Decision on Referral of Case Pursuant to Rule 11*bis*, IT-01-42/2-I, Referral Bench, 17.11.2006 162
- Prosecutor v. Krajišnik and Plavšić* (Cases No. IT-00-39 and 40)
- Decision on Prosecution Motion for Clarification in respect of Applications of Rules 65*ter*, 66(B) and 67(C), IT-00-39 and 40-PT, T.Ch. III 1.8.2001 381
- Decision on Momocilo Krajišnik's Notice of Motion for Provisional Release, IT-00-39 and 40-PT, T.Ch. III 8.10.2001 370
- Sentencing Judgment (Plavšić), IT-00-39 and 40/1-T, T.Ch. III 27.2.2003 399
- Prosecutor v. Krnojelac* (Case No. IT-97-25)
- Judgment IT-97-25-T, T.Ch. II 15.3.2002 195, 197, 198–9, 203–7, 215, 247, 297, 302–3
- Judgment, IT-97-25-A, A.Ch. 17.9.2003 307, 376, 389
- Prosecutor v. Krstić* (Case No. IT-98-33)
- Judgment, IT-98-33-T, T.Ch. I 2.8.2001 109, 169, 171, 177, 178, 180, 181, 183, 204, 205, 294, 397
- Decision on Application for Subpoenas, IT-98-33-A, A.Ch. 1.7.2003 409
- Judgment, IT-98-33-A, A.Ch. 19.4.2004 9, 23, 167, 170, 177, 178, 180, 181, 182, 183, 185, 310, 382, 394, 396, 397
- Prosecutor v. Kunarac, Kovač and Vuković* (Cases No. IT-96-23 and IT-96-23/1)
- Judgment, IT-96-23-T and IT-96-23/1-T, T.Ch. II 22.2.2001 10, 192, 193–5, 197–200, 203–5, 207–10, 243–4, 297, 394
- Judgment, IT-96-23 and IT-96-23/1-A, A.Ch. 12.6.2002 193, 195, 197, 198, 199–200, 204, 210, 238, 284, 296–7

Prosecutor v. Kupreškić et al. (Case No. IT-95-16)

Decision on Communications between the Parties and Their Witnesses, IT-95-16-T, T.Ch. II 21.9.1998 367

Decision on Defence Motion to Summon Witness, IT-95-16-T, T.Ch. II 6.10.1998 358

Judgment, IT-95-16-T, T.Ch. II 14.1.2000 7, 111, 197, 199, 200–1, 204, 213–14, 216, 219, 249–50, 376–7, 383

Appeal Judgment, IT-95-16-A, A.Ch. 23.10.2001 338, 388

Prosecutor v. Kvočka et al. (IT-98-30/1)

Judgment, IT-98-30/1-T, T.Ch. I 2.11.2001 201, 214, 219, 302, 335

Judgment, IT-98-30/1-A, A.Ch. 28.2.2005 296, 304, 307, 335

Prosecutor v. Limaj, Bala and Musliu (Case No IT-03-66)

Judgment, IT-03-66-T, T.Ch. II 30.11.2005 237, 306, 324

Prosecutor v. Milošević (Cases No. IT-99-37, IT-01-50, IT-01-51, IT-02-54)

Decision on Review of Indictment and Application for Consequential Orders, IT-99-37-PT (Judge Hunt), 24.5.1999 (also concerning four other accused) 414, 439

Status Conference, IT-99-37-PT, T.Ch. III 30.8.2001 360

Decision on Review of Indictment, IT-01-51-I (Judge May) 22.11.2001 379

Decision on Prosecutor's Request to have Written Statements Admitted under Rule 92bis, IT-02-54-T, T.Ch. III 21.3.2002 384

Reasons for Decision on Prosecution Interlocutory Appeal from Refusal to Order Joinder, IT-99-37-AR73, IT-01-50-AR73, IT-01-51-AR73, A.Ch. 18.4.2002 380

Reasons for Refusal of Leave to Appeal from Decision to Impose Time Limit, IT-02-54-AR73, A.Ch. 16.5.2002 380

Public Version of the Confidential Decision on the Interpretation and Application of Rule 70, IT-02-54-AR108bis and AR73.3, A.Ch. 23.10.2002 362, 363, 417

Order Concerning the Preparation and Presentation of the Defence Case, IT-02-54-T, T.Ch. III 17.9.2003 380

Decision on Interlocutory Appeal on the Admissibility of Evidence-in-Chief in the Form of written Statements, IT-02-54-AR73.4, A.Ch. 30.9.2003 (Dissenting and Separate Opinions) 384

Order Concerning the Testimony of Lord Owen, IT-02-54-T, T.Ch. III 17.10.2003 380

Order Appointing Branco Rakić as Legal Associate to the Accused, IT-02-54-T, T.Ch. III 23.10.2003

Decision on Prosecutor's Application for a Witness Pursuant to Rule 70(B), IT-02-54-T, T.Ch. III 30.10.2003

Decision on the Interlocutory Appeal by the *Amici Curiae* Against the Trial Chamber Order Concerning the Presentation and Preparation of the Defence Case, IT-02-54-AR73.6, A.Ch. 20.1.2004 380

- Order Pursuant to Rule 98 to Call as a Court Witness Carl Bildt, IT-02-54-T, T.Ch. III 18.2.2004 362
- Order Rescheduling and Setting the Time Available to Present the Defence Case, IT-02-54-T, T.Ch. III 25.2.2004 380
- Decision on Motion for Judgment of Acquittal, IT-02-54-T, T.Ch. III 16. 6.2004 308
- Decision on Interlocutory Appeal of the Trial Chamber's Decision on the Assignment of Defence Counsel, IT-02-54-AR73.7, A. Ch. 1.11.2004 360, 390
- Decision on Assigned Counsel Application for Interview and Testimony of Tony Blair and Gerhard Schröder, IT-02-54-T, T.Ch. III 9.12.2005 409
- Prosecutor v. Milutinović, Sainović, Ojdanic, Pavković, Lazarević, Dordjevic and Lukić* (Cases No. IT-99-37 and IT-05-87)
- Decision on Motion Challenging Jurisdiction, IT-99-37-PT, T.Ch. III 6.5.2003 156, 410
- Decision on Dragoljub Odjanić's Motion Challenging Jurisdiction-Joint Criminal Enterprise, IT-99-37-AR72, A.Ch. 21.5.2003 7, 305
- Reasons for Decision Dismissing the Interlocutory Appeal Concerning Jurisdiction Over the Territory of Kosovo, IT-99-37-AR72.2, A.Ch. 8.6.2004. 104
- Decision on Second Application of Dragoljub Ojdanic for Binding Orders Pursuant to Rule 54bis, IT-05-87-PT, T.Ch. III 17.11.2005 411
- Decision on Defence Motions Alleging Defects in the Form of the Proposed Amended Joinder Indictment, IT-05-87-PT, T.Ch. III 22.3.2006 304, 376
- Prosecutor v. Mrkšić, Kvočka, Radić, Žigić and Prcać* (Case No. IT-98-30/1)
- Decision on the Motion for Release by the Accused Slavko Dokmanović, IT-95-13a-PT, T.Ch. II 22.10.1997 10, 373
- Judgment, IT-98-30/1-T, T. Ch. I 2.11.2001 201, 214, 219, 302, 335
- Judgment, IT-98-30/1-A, A.Ch. 28.2.2005 296, 304, 335
- Prosecutor v. Naletilić and Martinović* (Case No. IT-98-34)
- Decision on Vinko Martinović's Objection to the Amended Indictment and Mladen Naletilić's Preliminary Motion to the Amended Indictment, IT-98-34-PT, T.Ch. I 14.2.2001 375
- Judgment, IT-98-34-T, T.Ch. I 31.3.2003 233, 247
- Prosecutor v. Dragan Nikolić* (Case No. IT-94-2)
- Decision of Indictment Pursuant to Rule 61 of the Rules of Procedure and Evidence, IT-94-2-R61, T.Ch. II 20.10.1995 374
- Decision on Defence Motion Challenging the Exercise of Jurisdiction by the Tribunal, IT-94-2-PT, T.Ch. II 9.10.2002 85, 372
- Decision on Interlocutory Appeal Concerning Legality of Arrest, IT-94-2-AR73, A.Ch. 5.6.2003 39, 372–3
- Sentencing Judgment, IT-94-2-S, T.Ch. II 18.12.2003 28, 398
- Judgment of Sentencing Appeal, IT-94-2-A, A.Ch. 4.2.2005 385, 394, 396, 398

- Prosecutor v. Momir Nikolić* (Case No. IT-02-60/1) 19, 21
 Sentencing Judgment, IT-02-60/2-S, T.Ch. I 2.12.2003 18, 19, 21, 24, 25, 396
 Judgment on Sentencing Appeal, IT-02-60/1-A, A.Ch. 8.3.2006 397–8
- Prosecutor v. Oric* (Case No. IT-03-68)
 Interlocutory Decision on Length of Defence Case, IT-03-68-AR73.2, A.Ch. 20.7.2005 380
 Judgment, IT-03-68-T, T.Ch. II 30.6.2006 310, 314, 318, 322
- Prosecutor v. Plavšić* (Case No. IT-00-39 and 40) 25
 Sentencing Judgment, IT-00-39 and 40/S, T. Ch. III 27.2.2003 109
 See *Prosecutor v. Krajišnik and Plavšić*
- Prosecutor v. Popović, Beara, Nikolić, Borovčanin, Tolimir, Miletić, Gvero, Pandurević and Trbić* (Case No. IT-05-88; previously IT-02-57, IT-02-58, IT-02-63, IT-02-64, IT-04-80 and IT-05-86)
 Decision on Motion for Joinder, IT-02-57-PT, IT-02-58-PT, IT-02-63-PT, IT-02-64-PT, IT-04-80-PT, IT-05-86-PT, T.Ch. III 21.9.2005 380
- Prosecutor v. Prlić, Stojić, Praljak, Petković, Corić and Pušić* (Case No. IT-04-74)
 Decision on Motions for Re-Consideration, Clarification, Request for Release and Applications for Leave of Appeal, IT-04-74-AR65.1-3, A.Ch. 8.9.2004 370
- Prosecutor v. Rašević and Todović* (Case No IT-97-25)
 Decision on Referral of Case Pursuant to Rule 11*bis*, IT-97-25-PT, Referral Bench, 8.7.2005 41
- Prosecutor v. Šešelj* (Case No. IT-03-67)
 Decision on the Prosecutor's Motion for Order Appointing Counsel to Assist Vojislav Šešelj with his Defence, IT-03-67-PT, T.Ch. II 9.5.2003 360
 Decision on Assignment of Counsel, IT-03-67-PT, T.Ch. I 21.8.2006 360
- Prosecutor v. Sikirica and others* (Case No. IT-95-4)
 Order Granting Leave for Withdrawal of Charges Against Nikica Janjic, Dragan Kondic, Goran Lajic, Dragomir Saponja, and Nedjeljko Timarac, IT-95-4, T.Ch. 5.5.1998 374
- Prosecutor v. Simić et al.* (Case No. IT-95-9)
 Decision on the Prosecution Motion Under Rule 73 for a Ruling Concerning the Testimony of a Witness, IT-95-9-PT, T.Ch. III 27.7.1999 362, 363, 411
 Decision on Motion for Judicial Assistance to be Provided by SFOR and Others, IT-95-9-PT, T.Ch. III 18.10.2000 (incl. Separate Opinion by Judge Robinson) 372–3, 409
 Order on Request for Review Pursuant to Rule 108*bis* of Decision on Motion for Judicial Assistance to be Provided by SFOR and Others Dated 18 October 2000, IT-95-9-PT A.Ch. 27.3.2001 363, 411
 Order of the President on the Application for Early Release of Simo Žarić, IT-95-9, President 21.1.2004 401
- Prosecutor v. Stakić* (Case No. IT-97-24)
 Judgment, IT-97-24-T, T.Ch. II 31.7.2003 9, 173, 175, 176, 204, 302, 304, 397–8

- Judgment, IT-97-24-A, A.Ch. 22.3.2006 176, 181, 183, 184, 304–5, 397
- Prosecutor v. Stanisić* (Case No. IT-04-79)
- Decision on Defence Preliminary Motion on the Form of the Indictment, IT-04-79-PT, T.Ch. II 19.7.2005 378
- Prosecutor v. Strugar* (IT-01-42)
- Decision on Interlocutory Appeal, IT-01-42-A, A.Ch. 22.11.02 223
- Judgment, IT-01-42-T, T.Ch. II 31.01.2005 247
- Prosecutor v. Tadić* (Case No. IT-94-1) 1, 7, 10, 20, 24, 57, 68, 105
- Decision on the Prosecutor's Motion Requesting Protective Measures for Victims and Witnesses, IT-94-1, T.Ch. II 10.8.1995 (incl. Separate Opinion) 104, 354, 363
- Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, IT-94-1-AR72, A.Ch. 2.10.1995 1, 7, 10, 14, 51, 103, 104, 106–7, 226, 230, 233, 236, 237, 238, 241, 254–5, 352, 355, 390, 452
- Decision on the Defence Motion on the Principle of *Non Bis In Idem*, IT-94-1-T, T.Ch. II 14.11.1995 68
- Decision on the Defence Motions to Summon and Protect Defence Witnesses, and on the Giving of Evidence by Video-Link, IT-94-1-T, T.Ch. II 26.6.1996 358
- Decision on Defence Motion on Hearsay, IT-94-1-T, T.Ch. II 5.8.1996 351, 383
- Decision on Defence Motion to Dismiss Charges, IT-94-1-T, T.Ch. II 13.9.1996 387
- Opinion and Judgment, IT-94-1-T, T.Ch. II 7.5.1997 112, 189, 191–6, 198, 200, 216, 235, 237
- Sentencing Judgment, IT-94-1-T, T.Ch. II 14.7.1997 394, 397, 399–400
- Judgment, IT-94-1-A, A.Ch. 15.7.1999 9, 126, 182, 189, 191–2, 199, 235, 302, 305–7, 352, 358, 360, 388–9, 401
- Order Remitting Sentencing to a Trial Chamber, IT-94-1-A, A.Ch. 10.9.1999 388
- Judgment in Sentencing Appeals, IT-94-1-A and IT-94-1-Abis, A.Ch. 26.1.2000 21, 389
- Judgment on Allegations of Contempt against Prior Counsel, Milan Vujčić, IT-94-1-A-R77, A.Ch. 31.1.2000 391
- Decision on Motion for Review, IT-94-1-R, A.Ch. 30.7.2002 391
- Prosecutor v. Todorović* (IT-95-9/1)
- Sentencing Judgment, IT-95-9/1-S, T.Ch. I 31.7.2001 19, 20, 385, 397
- See also *Simić et al.*
- Prosecutor v. Vasiljević* (Case No. IT-98-32)
- Judgment, IT-98-32-T, T.Ch. I 29.11.2002 14, 334
- Judgment, IT-98-32-A, A.Ch. 25.2.2004 304, 308, 397

ICTR

- Prosecutor v. Akayesu* (Case No. ICTR-95-4)
- Judgment, ICTR-96-1-T, T.Ch. I 2.9.1998 114, 116, 169, 170, 171, 175, 176, 177, 178, 182, 184, 192, 194–5, 201, 207–9, 219, 237, 243, 261, 313

Judgment, ICTR-96-1-A, A.Ch. 1.6.2001 239, 375, 389, 397

Prosecutor v. Bagaragaza (Case No. ICTR-05-86)

Decision on the Prosecution Motion for Referral to the Kingdom of Norway, Rule 11*bis* of the Rules of Procedure and Evidence, ICTR-2005-05-R11*bis*, T. Ch. III 19.5.2006 116

Decision on Rule 11*bis* Appeal, ICTR-05-86-AR11*bis*, A. Ch. 30.8.2006 61

Prosecutor v. Bagilishema (Case No. ICTR-95-1A)

Judgment, ICTR-95-1A-T, T.Ch. I 7.6.2001 172, 180, 196

Judgment (Reasons) IT-95-1A-A, A.Ch. 2.7.2002 314, 318, 321, 323, 325

Prosecutor v. Bagosora, Kabiligi, Ntabakuze and Nsengiyumva (Case No. ICTR-98-41)

Decision on Request for Subpoena for Major Jacques Biot, ICTR-98-41-T, T. Ch. I 14.7.2006 409

Decision on Request for Subpoena, ICTR-98-41-T, T.Ch. I 11.9.2006 409

Prosecutor v. Bagosora and 28 others (Case No. ICTR-98-37)

Decision on the Admissibility of the Prosecutor's Appeal from the Decision of a Confirming Judge Dismissing an Indictment Against Théoneste Bagosora and 28 others, ICTR-98-37-A, A.Ch. 8.6.1998 371

Prosecutor v. Barayagwiza (Case No. ICTR-97-19)

Decision, ICTR-97-19-AR72, A.Ch. 3.11.1999 115, 355, 371–2, 421

Decision (Prosecutor's Request for Review of Reconsideration), ICTR-97-19-AR72, A.Ch. 31.3.2000. 115, 355, 391, 421

Prosecutor v. Gacumbitsi (Case No. ICTR-2001-64)

Judgment, ICTR-2001-64-A, A. Ch. 7.7.2006 302–3, 306

Prosecutor v. Kajelijeli (Case No. ICTR-98-44A)

Judgment and Sentence, ICTR-98-44A-T, T.Ch. II 1.12.2003 318, 397

Judgment, ICTR-98-44A-A, A.Ch. 23.5.2005 354, 370, 372–3, 378, 398–90

Prosecutor v. Kambanda (Case No. ICTR-97-23)

Judgment and Sentence, ICTR-97-23-S, T.Ch. I 4.9.1998 114, 165, 167, 179, 267, 397, 398, 439

Judgment, ICTR-97-23-A, A.Ch. 19.10.2000 114, 389, 398–9

Prosecutor v. Kamuhanda (Case No. ICTR-99-54A)

Judgment, ICTR-99-54A-T, T.Ch. II 22.1.2004 (dissenting opinions) 396

Judgment, ICTR-99-54A-A, A.Ch. 19.9.2005 (separate and dissenting opinions) 396–7

Prosecutor v. Kanyabashi (Case No. ICTR-96-15)

Decision on the Defence Motion on Jurisdiction, ICTR-96-15-T, T.Ch. II 18.6.1997 113, 231, 355

Decision on the Defence Extremely Urgent Motion on Habeas Corpus and for Stoppage of Proceedings, ICTR-96-15-I, T.Ch. II 23.5.2000 372

Decision on Defence Preliminary Motion for Defects in the Form of the Indictment, ICTR-96-15-I, T.Ch. II 31.5.2000 377

Prosecutor v. Karemera, Ngirumpatse, Nzirodera and Rwamakuba (Case No. ICTR-98-44)

Decision on Prosecutor's Interlocutory Appeal against Trial Chamber III Decision of 8 October 2003 Denying Leave to File an Amended Indictment, ICTR-98-44-AR73, A.Ch. 19.12.2003 375

Decision on the Prosecutor's Motion for Leave to Amend the Indictment, ICTR-98-44-T, T.Ch. III 13.2.2004 377

Decision on Interlocutory Appeals Regarding the Continuation of Proceedings with a Substitute Judge and on Nzirodera's Motion for Leave to Consider New Material, ICTR-98-44-AR15bis.2, A.Ch. 28.9.2004 355

Reasons for Decision on Interlocutory Appeals Regarding the Continuation of Proceedings with a Substitute Judge and on Nzirodera's Motion for Leave to Consider New Material, ICTR-98-44-AR15bis.2, A.Ch. 22.10.2004 (two dissenting opinions) 355

Decision on the Prosecutor's Interlocutory Appeal of Decision on Judicial Notice, ICTR-98-44-AR73(C), A.Ch. 16.6.2006 116

Prosecutor v. Kayishema and Ruzindana (Case No. ICTR-95-1)

Judgment ICTR-95-1-T, T.Ch.II 21.5.1999 167, 169, 171, 173, 175, 179, 180, 182, 185, 195, 202, 238, 318, 323–5

Judgment (Reasons), ICTR-95-1-A, A.Ch. 1.6.2001 174, 181, 358

Prosecutor v. Musema (Case No. ICTR-95-5, ICTR-96-13)

Decision on the Formal Request for Deferral Presented by the Prosecutor, ICTR-95-5-D, T.Ch. I 12.3.1996 68

Judgment, ICTR-96-13-T, T.Ch. I 27.1.2000 194 n.39, 182, 194, 318, 383

Judgment, ICTR-96-13-A, A.Ch. 16.11.2001 377, 389, 398

Prosecutor v. Nahimana, Barayagwiza and Ngeze (Case No. ICTR-99-52)

Judgment, ICTR-99-52-T, T. Ch. I 3.12.2003 10, 115, 116, 315

Prosecutor v. Ndindabahizi (Case No. ICTR-2001-74)

Judgment and Sentence, ICTR-2001-74-I, T.Ch. I 15.7.2004 173

Prosecutor v. Niyitegeka (Case No. ICTR-96-14)

Judgment, ICTR-96-14-A, A.Ch. 9.7.2004 375

Prosecutor v. Ntagerura, Bagambiki and Imanishimwe (Case No. ICTR-99-46)

Judgment and Sentence, ICTR-99-46-T, T.Ch. III 25.2.2004 377

Prosecutor v. Ntakirutimana and Ntakirutimana (Case No. ICTR-96-10 and ICTR-96-17)

Judgment and Sentence, ICTR-96-10 and ICTR-96-17-T, T.Ch. I 21.2.2003 195, 396

Judgment, ICTR-96-10-A and ICTR-96-17-A, A.Ch. 13.12.2004 305, 310–11, 375

Prosecutor v. Ntuyuhaga (Case No. ICTR-96-40)

Decision on the Prosecutor's Motion to Withdraw the Indictment, ICTR-96-40-T, T.Ch. I 18.3.1999. 115

Prosecutor v. Nyiramasuhuko and Ntahobali (Case No. ICTR-97-21)

Decision on Defence Motion for a Stay of Proceedings and Abuse of Process, ICTR-97-21-T, T.Ch. II 20.2.2004 372

Prosecutor v. Ruggio (Case No. ICTR-97-32)

Judgment and Sentence, ICTR-97-32-I, T.Ch. I 1.06.2000 214

Prosecutor v. Rukundo (Case No. ICTR-2001-70)

Decision on the Motion for Provisional Release of Father Emmanuel Rukundo, ICTR-2001-70-I, T.Ch. III 15.7.2004 370

Prosecutor v. Rutaganda (Case No. ICTR-96-3)

Trial Chamber Judgment, ICTR-97-21-T T. Ch. 6.12.1999 171, 202

Judgment, ICTR-97-21-A, A.Ch. 26.5.2003 181, 238, 355

Prosecutor v. Rutaganira (Case No. ICTR-95-1C)

Decision on Appeal of a Decision by the President on Early Release, ICTR-95-1C-AR, A.Ch. 24.8.2006 401

Prosecutor v. Rwamakuba (Case No. ICTR-98-44)

Decision on Interlocutory Appeal Regarding Application of Joint Criminal Enterprise to the Crime of Genocide, ICTR-98-44- AR72.4, A.Ch. 22.10.2004 306, 309

Prosecutor v. Semanza (Case No. ICTR-97-20)

Decision, ICTR-97-20-A, A.Ch. 31.5.2000 372, 399

Trial Chamber judgment ICTR-97-20-T T. Ch. 15.5.2003 173, 175, 180, 200, 208

Judgment, ICTR-97-20-A, A.Ch. 20.5.2005 394, 399, 401

Prosecutor v. Serushago (Case No. ICTR-98-39)

Sentence, ICTR-98-39-S, T.Ch. I 5.2.1999 396

ICC

Situation in the Democratic Republic of Congo (Case No. ICC-01/04)

Decision on the Prosecutor's Request for Measures under Article 56, ICC-01/04, PT.Ch. I 26.4.2005. 367

Decision on the Applications for Participation in the Proceedings of VPRS1, VPRS2, VPRS3, VPRS4, VPRS5 and VPRS6 (Public Redacted Version), ICC-01/04, PT.Ch. I 17.1.2006 361

Judgment on the Prosecutor's Application for Extraordinary Review of Pre-Trial Chamber I's 31 March 2006 Decision Denying Leave to Appeal, IT-01/04, A.Ch. 13.7.2006 361

Lubanga Dyilo (Situation in the DRC) (Case No. ICC-01/04-01/06)

Decision on the Prosecutor's Application for a Warrant of Arrest, Article 58, ICC-01/04-01/06, PT.Ch. I 10.2.2006 128, 130, 364, 371

- Decision concerning Pre-Trial Chamber I's Decision of 10 February 2006 and the Incorporation of Documents into the Record of the Case against Mr Thomas Lubanga Dyilo, ICC-01/04-01/06, PT.Ch. I 24.2.2006 304, 414, 415
- Decision on the Final System of Disclosure and the Establishment of a Timetable, IT-01/04-01/06, PT.Ch. I 15.5.2006 382
- Decision Establishing General Principles Governing Applications to Restrict Disclosure pursuant to Rule 81(2) and (4) of the Rules of Procedure and Evidence, ICC-01/04-01/06, PT.Ch. I 19.5.2006 382
- Situation in Uganda* (Case No. ICC-02/04-01/05)
- Decision on the Prosecutor's Application for Warrants of Arrest under Article 58, ICC-02/04, PT.Ch. II 8.7.2005 414
- Decision on Prosecutor's Application for Leave to Appeal In Part Pre-Trial Chamber II's Decision on the Prosecutor's Applications for Warrants of Arrest under Article 58, ICC-02/04-01/05, PT.Ch. II 19.8.2005 390
- Decision on the Prosecutor's Application for Unsealing of the Warrants of Arrest, Case 01/05, PT.Ch. II 13.10.2005 380

SCSL

- Prosecutor v. Norman, Fofana and Kondewa* (Case No. SCSL-04-14)
- (*Norman*) Decision on Appeal by the Truth and Reconciliation Commission of Sierra Leone and Chief Samuel Hinga Norman JP Against the Decision of His Lordship, Mr Justice Bankole Thompson Delivered on 30 October 2003 to Deny the TRC's Request to Hold a Public Hearing With Chief Samuel Hinga Norman JP, SCSL-03-08-PT, President, A. Ch. 28.11.2003. 35
- (*Norman*) Decision on Preliminary Motion based on Lack of Jurisdiction (Judicial Independence), SCSL-2004-14-AR72(E), A.Ch. 13.3.2004 150
- (*Kallon, Norman and Kamara*) Decision 13.3.2004, see *Sesay et al.* 33, 151
- (*Fofana*) Decision on Preliminary Motion on Lack of Jurisdiction Materiae: Nature of the Armed Conflict, SCSL-2004-14-AR72(E), A.Ch. 25.5.2004 152
- (*Fofana*) Decision on Preliminary Motion on Lack of Jurisdiction: Illegal Delegation of Jurisdiction by Sierra Leone, SCSL-2004-14-AR72(E), A.Ch. 25.5.2004 152
- (*Fofana*) Decision on Preliminary Motion on Lack of Jurisdiction: Illegal Delegation of Powers by the United Nations, SCSL-2004-14-AR72(E), A.Ch. 25.5.2004 151
- (*Norman et al.*) Decision on the Motion to Recuse Judge Winter from the Deliberation in the Preliminary Motion on the Recruitment of Child Soldiers, SCSL-04-14-T, A.Ch. 28.5.2004 355
- (*Norman*) Decision on Preliminary Motion based on Lack of Jurisdiction (Child Recruitment), SCSL-2004-14-AR72(E), A.Ch. 31.5.2004 152, 260, 442–4
- (*Norman et al.*) Decision on the Application of Samuel Hinga Norman for Self-Representation Under Article 17(4)(d) of the Statute of the Special Court, SCSL-04-14-T, T.Ch. 8.6.2004 360

Decision on Interlocutory Appeals against Trial Chamber Decision Refusing to Subpoena the President of Sierra Leone, SCSL-04-14-T, A.Ch. 11.9.2006 409

Prosecutor v. Sesay, Kallon and Gbao (Case No. SCSL-04-15)

(*Sesay*) Decision on Defence Motion Seeking the Disqualification of Justice Robertson from the Appeals Chamber, SCSL-04-15-AR15, A.Ch. 13.3.2004 355

(*Kallon, Norman and Kamara*) Decision on Constitutionality and Lack of Jurisdiction, SCSL-2004-15-AR72(E) a.o., A.Ch. 13.3.2004 151

(*Kallon and Kamara*) Decision on Challenge to Jurisdiction: Lomé Accord Amnesty, SCSL-2004-15-AR72(E) a.o., A.Ch. 13.3.2004 51, 151

(*Gbao*) Decision on Preliminary Motion on the Invalidity of the Agreement between the United Nations and the Government of Sierra Leone on the Establishment of the Special Court, SCSL-2004-15-AR72(E), A.Ch. 25.5.2004 151

Prosecutor v. Brima, Kamara and Kanu (Case. No. SCSL-2004-16)

(*Kallon, Norman and Kamara*) Decision 13.3.2004, see *Sesay et al.* 151

(*Kallon and Kamara*) Decision 13.3.2004, see *Sesay et al.* 51, 151

Decision on the Prosecution's Oral Application for Leave to be Granted Witness TF1-150 to Testify Without being Compelled, SCSL-04-16-T, T.Ch. II 16.9.2005 362

Prosecutor v. Taylor (Case No. SCSL-2003-01)

Decision on Immunity from Jurisdiction, SCSL-2003-01-I, A.Ch. 31.5.2004 151

European Court of Human Rights

Al-Adsani v. United Kingdom 424

App. No. 35763/97; (2002) 34 EHRR 11; [2001] ECHR 761

Aydin v. Turkey

Decision of 25 November 1997; (1998) 25 EHRR 251; [1997] ECHR 75 207, 208

Borodovskiy v. Russia

Decision of 8.5.2005; [2005] ECHR 66 78

Bozano v. France

Decision of 18.12.1986; (1986) 9 EHRR 297; [1986] ECHR 16 84

Chahal v. United Kingdom

Decision of 15.11.1996; (1996) 23 EHRR 413; [1996] ECHR 54 86

Fischer v. Austria

Decision of 29.8.2001, [2002] ECHR 5 67

Gradinger v. Austria

Decision of 23.10.1995; Series A 328-C; [1995] ECHR 36 67

Ireland v. United Kingdom

Series A No. 25, 5310/71 [1978] ECHR 1 83, 207, 297

Öcalan v. Turkey

Decision of 12.5.2005, [2005] ECHR 282; (2005) 41 EHRR 45 83, 86, 372

Oliveira v. Switzerland

Decision of 30.7.1998; Reports of Judgments and Decisions 1998-V; [1998] ECHR 68;
(1999) 28 EHRR 289 67

Papageorgiou v. Greece

Decision of 9.5.2003; [2003] ECHR 236; (2004) 38 EHRR 30 87

Ringeisen v. Austria

Decision of 16.7.1971; Series A No. 13; 355

Selmouni v. France

Decision of 28 July 1999; (1999) 29 EHRR 403; [1999] ECHR 66 207, 297

Soering v. United Kingdom

Decision of 7.7.1989; (1989) 11 EHRR 439; [1999] ECHR 14 78, 83

Stoichkov v. Bulgaria

Decision of 24.6.2005; [2005] ECHR 189 84

Tyrer v. United Kingdom

Decision of 25.4.1978; Series A 26; [1978] ECHR 2; (1979–80) 2 EHRR 387 83

European Court of Justice*Gözütok and Brügge*

Joined cases C-187/01 and C-385/01, judgment 11.2.2003; [2003] 2 CMLR 2; [2003]
ECR I-1345 67

Miraglia

Case C-469/03, judgment 10.3.2005; [2005] 2 CMLR 6; [2005] ECR I-2009 67

Van Esbroeck

Case C-436/04, judgment 9.3.2006; [2006] 3 CMLR 6; [2006] ECR I-2333 67

Inter-American Court of Human Rights*Barrios Altos case (Chumbipuma Aguirre et al. v. Peru)*

Judgment of 14.3.2001; Series C No. 75, [2001] IACHR 5 65

Velasquez-Rodriguez v. Honduras

Judgment of 29.7.1988, reprinted in (1989) 28 ILM 291 32

Inter-American Commission on Human Rights*Hermosilla et al. v. Chile*

Case No. 10.843, Report No. 36/96, 15.10.1996

Herrera et al. v. Argentina

Cases No. 10.147, 10.181, 10.240, 10.262, 10.309 and 10.311, Report No. 28/92, 2.10.1992

Las Hojas Massacre, El Salvador

Case No. 10.287, Report No. 26/92, 24.9.1992 237

Las Tablada, Argentina

Case No. 11.137, Report No. 55/97, 20.10.1997 237

Fernando and Racquel Meiji v. Peru

Case No. 10.970, Report No. 5/96, 01.03.1996 208

Mendoza et al. v. Uruguay

Cases No. 10.029, 10.036, 10.145, 10.305, 10.372, 10.373, 10.374 and 10.375, Report No. 29/82, 2.10.1992

Reyes et al. v. Chile

Cases No. 11.228, 11.229, 11.231 and 11.182, Report No. 34/96, 15.10.1996

Human Rights Committee (ICCPR)*Casanovas v. France*

Decision 441/90 35

Kindler v. Canada

Decision of 11.11.1993, reprinted in 98 ILR 426 83

Lovlace v. Canada 24/1977

Decision of 30.7.1981

Ng v. Canada

Decision of 5.11.1993, reprinted in (1993) ILM 479 78

National courts*Argentina**Junta* (trial) (1987) 26 ILM 317 303*Australia**Nulyarimma v. Thompson*

Federal Court of Australia, Judgment 1.9.1999; [1999] FCA 1192; 165 ALR 621 62

Polyukhovic v. The Commonwealth of Australia 56, 62, 66, 69

[1991] HCA 32; 172 Commonwealth Law Reports 501 FC 91/026 189, 196

*Austria**Cvetjkovic (Dusko)*, Beschluss des Oberstern Gerichtshofs Os 99/94-6, 13 July 1994 51**Bosnia and Herzegovina (Human Rights Chamber)***Boudellaa et al. v. Bosnia and Herzegovina et al.*Decision of 11.10.2002, reprinted in (2002) 23 *Human Rights Law Journal* 406 83

Canada

- Meyer* (Abbaye Ardenne case) IV LRTWC 97 315
Mugesera v. Canada [2005] 2 SCR 100 315
R v. Finta
 Supreme Court, Judgment 24.3.1994; [1994] 1 SCR 701; 104 ILR 285 56, 57, 66, 70, 189, 196, 200, 239
Rose v. R [1947] 3 DLR 618 435
Suresh v. Canada [2002] SCC 1 290

Chile

- Sandoval* case (Contreras Sepulveda and others)
 Supreme Court of Chile, Case No. 517/2004, Resolucion 22267, Judgment 17.11.2004 65

East Timor

- Armando Dos Santos*
 Case No. 16/2001; Court of Appeals, Judgment 15.7.2003 158

France

- Barbie* case
 Court of Cassation, Judgment 6.10.1983; JCP (1983) II G No. 20,107; RGDIP (1984) 507; summary in 78 ILR (1988) 128 196
 Court of Cassation, Judgment 26.1.1984; JCP (1984) II G No. 20,197; RGDIP (1984) 971; summary in 78 ILR (1988) 132 61, 65
 Court of Cassation, Judgment 20.12.1985; JCP (1986) II G No. 20,655; summary in 78 ILR 136 62
Qaddafi, 125 ILR 456 (France, Cour de Cassation, 2001) 435, 438
Touvier case
 Court of Cassation, Judgment 30.6.1976; JCP (1976) II G No. 18,435 55, 61
 Paris Court of Appeals, Judgment 13.4.1992; 100 ILR 338 192
 Court of Cassation, Judgment 27.11.1992; JCP (1993) II G No. 21,977; 100 ILR 358
 Court of Cassation, Judgment 21.10.1993; (1993) 307 Bull Crim 770

Germany

- Dover Castle* (1922) 16 AJIL 704 92
Llandovery Castle (1922) 16 AJIL 708 92
Distomo Massacre (2003) 42 ILM 1030 424

Jorgic case

Federal Constitutional Court, Case No. 2 BvR 1290/99, Judgment 12.12.2000; *Neue Juristische Wochenschrift* (2001) 1848 64

Israel

Attorney-General of Israel v. Demjanjuk

Israel Supreme Court, Crim. App. No. 347/88, 29.7.1993 43, 56, 69

Attorney-General of Israel v. Eichmann (1968) 36 ILR 5 (DC) 38, 55, 85, 173, 176, 191, 192

Attorney-General of Israel v. Eichmann (1968) 36 ILR 277 (Supreme Court) 189, 433

Italy

Hass and Priebke case 65

Rome Military Tribunal, Judgment 22.7.1997; *Rassegna Giustizia Militare* Nos. 1-2-3 (1999) 103 55

Military Court of Appeal, Judgment 7.3.1998; *Rassegna Giustizia Militare* Nos. 4-5-6 (1999) 25-130 55

Supreme Court of Cassation, Judgment 16.11.1998; *Rassegna Giustizia Militare* Nos. 4-5-6 (1999) 145-196 55

Netherlands

Bouterse (2000) 51 *Nederlandse Jurisprudentie* 302 433

Gerbsch XIII LRTWC 131 334

Menten 75 ILR 362 196

Rohrig, Brunner and Heinze (1950) 17 ILR 393 43

South Africa

Azanian People's Organization (AZAPO) and others v. President of the Republic of South Africa (1996) 4 SA 562 (CC) 31

Mohamed and Dalvie v. President of the Republic of South Africa and Six Others 2001 (3) SA 893 (CC); 2001 (7) BCLR 685 (CC) 86

State v. Ebrahim 1991 (2) SA 553 39, 372

Spain

Castro (1999) 32 ILM 596 435

Guatemalan Generals case, Tribunal Supremo, Sala de lo Penal, Sentencia 327/2003 50

Pinochet Spanish National Court, Criminal Division (Plenary Session) Case 19/97, 4.11.1998; Case 1/98, 5.11.1998 49

Switzerland

In re Gabrez, Military Tribunal, Division 1, Lausanne, 18 April 1997

UK

A v. Secretary of State for the Home Department [2004] UKHL 56 294–5

A v. Secretary of State for the Home Department (No. 2) [2005] UKHL 71; [2006] 2 AC 221

Al-Adsani v. Government of Kuwait 107 ILR 536 (1996) 424

Al Megrahi v. HM Advocate

2002 SCCR 509 162

Chusaburo III LRTWC 76 335

Essen Lynching Trial I LRTWC 88 239, 305

Heyer (Erich) I LRTWC 88 305

Her Majesty's Advocate v. Al Megrahi

High Ct. Justiciary at Camp Zeist 162

Jones v. Kingdom of Saudi Arabia [2006] UKHL 26; [2006] 2 WLR 1424 424, 427, 432–3

Mofaz reproduced 53 *ICLQ* (2004) 769 428, 436

Mugabe reproduced 53 *ICLQ* (2004) 769 428

Peleus case, 13 ILR 248

Pinochet 428

Re Pinochet Ugarte [1998] All ER(D) 629; [1998] EWJ No. 2878 (QB Div Ct. 1998) (Quicklaw). 429

R v. Bow Street Metropolitan Stipendiary Magistrate ex parte Pinochet Ugarte (No. 1) [1998] 4 All ER 897, HL 429

R v. Bow Street Metropolitan Stipendiary Magistrate ex parte Pinochet Ugarte (No. 2) [1999] 1 All ER 577, HL 430

R v. Bow Street Metropolitan Stipendiary Magistrate ex parte Pinochet Ugarte (No. 3) [2000] 1 AC 147; [1999] 2 WLR 827; [1999] 2 All ER 97, HL 75, 82, 196, 295, 425, 430–5

R v. Horseferry Road Magistrates ex parte Bennett [1993] 2 All ER 318 39

R v. Jones (Appellant) (formerly R v. J (Appellant)) [2006] UKHL 16 62, 263, 272

R v. Sawoniuk 55

Court of Appeal (Criminal Division) Judgment 10.2.2000; [2000] 2 Crim App Rep 220

Sandrock (Otto) (The Almelo case) I LRTWC 35 305

Tesch and others (The Zyklon B case) I LRTWC 93 45, 239, 310

Tessmann (Willi) case, cited at XV LRTWC 177 337–8

Treacy v. Director of Public Prosecutions

[1971] AC 537; [1971] 2 WLR 112; [1971] 1 All ER 110, HL 67

Von Falkenhorst XI LRTWC 18 313*Washio Awochi* XII LRTWC 122 43**US***Altstötter (Josef) et al.* (Justice Trial) VI LRTWC 1 191, 196, 224, 246*Demjanjuk* US District Court (ND Ohio), Judgment 15.4.1985 (extradition); 612 F Supp 544 (DC Ohio 1985) 56*Demjanjuk v. Petrovsky et al.* US District Court (ND Ohio), Judgment 17.5.1985 (habeas corpus); 612 F Supp 571 (DC Ohio 1985)

US Court of Appeal (6th Cir), Judgment 31.10.1985; 776 F 2d 571 (6th Cir 1985) 46, 56

US Supreme Court, Decision 24.2.1986 (certiorari denied); 475 US 1016 (1986) 46

Filartiga v. Pena-Irala 630 F 2d 876 (1980) 36*Hamdan v. Rumsfeld*, 126 S Ct 2749 (2006) 223, 246, 452*Hirota v. MacArthur* 335 US 876; 93 L Ed 1903 96*Princez v. Federal Republic of Germany*, 26 F 3d 1166 (DC Cir. 1994) 424*Schooner Exchange v. M'Fadden* 11 US 116 (1812) 426*Sosa v. Alvarez-Machain* 542 US 692 (2004) 36*Tachiona v. Mugabe*, 169 F Supp 2d 259 (SDNY, 2001) 424, 426*US v. Masuda and others* (The Jaluit Atoll case) I LRTWC 71 302*US v. Calley*

Court Martial, Judgment 29.3.1971 and Sentence 31.3.1971; not reported 56

US Army Court of Military Review, Decision 16.2.1973; (1973) 46 CMR 1131 42

US Court of Military Appeals, Decision 21.12.1973; (1973) 48 CMR 19; (1973) 22 USCMA 534 42, 56

US v. Flick IX LRTWC 1 191*US v. Karl Brandt et al.* (The Doctors' Trial) IV LRTWC 91 196, 212, 323*US v. Krauch and others* (I.G. Farben) X LRTWC 1 272, 339*US v. Krupp* X LRTWC 69 272*US v. List et al.* (The Hostages case) VIII LRTWC 1 223, 323*US v. Medina*

Court Martial, Judgment 22.9.1971; (1971) 43 Court Martial Reports 243

US v. Ohlendorf et al. (Einsatzgruppen Trial) 4 TWC 411 191*US v. Sissoko* (1997) 121 IR 599 426*US v. von Leeb* (The High Command Case) XII LRTWC 1 225, 228, 271, 339*US v. von Weizsäcker et al.* (The Ministries case) (Trials of War Criminals before the Nuremberg Military Tribunals) United States Government Printing Office vol. XIV; 14 TWC 1 191, 274*US v. Yamashita* 327 US 1 100, 321*US v. Yunis* (1991) 30 ILM 403 42

Table of Treaties and other International Instruments

- 22.08.1864 Convention for the Amelioration of the Condition of Wounded in Armies in the Field 1 Bevans 7 222
- 18.10.1907 Hague Regulations Respecting the Laws and Customs of War on Land, Annex to Hague Convention IV, 9 UKTS (1910) Cd.5030 6, 222, 225, 253
- 28.06.1919 Treaty of Versailles 112 BFSP 1 (1919) 92, 262
- 17.06.1925 Geneva Protocol for the Prohibition on the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare 94 LNTS 65 255
- 25.09.1926 Slavery Convention 60 LNTS 253, 212 UNTS 17 203, 281
- 10.06.1930 Convention Concerning Forced and Compulsory Labour 39 UNTS 55 203
- 16.11.1937 Convention for the Creation of an International Criminal Court (1938) 92
- 16.11.1937 Convention for the Prevention and Punishment of Terrorism League of Nations Official Journal Special Supp. 156 284
- 26.06.1945 Charter of the United Nations, United Nations Conference on International Organization Documents Vol. 15 (1945) 335
- 08.08.1945 Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis Powers and Charter of the International Military Tribunal 82 UNTS 279 343
- 13.02.1946 Convention on the Privileges and Immunities of the United Nations 1 UNTS 15 425, 426
- 09.12.1948 Convention on the Prevention and Punishment of Genocide 78 UNTS 277 6, 32, 54, 59, 61, 62, 64, 66, 72, 79, 82, 114, 119, 120, 135, 154, 165, 166, 168–78, 185, 191, 202, 302, 305, 310, 315, 318, 343, 393
- 10.12.1948 Universal Declaration of Human Rights, GA resolution 217 A(III) 206, 372
- 12.08.1949 Geneva Convention I for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field 75 UNTS 31 56, 61, 71, 72, 222, 228, 233, 240, 248, 393
- 12.08.1949 Geneva Convention II for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea 75 UNTS 85 58, 61, 71, 72, 222, 228, 240, 248, 393

- 12.08.1949 Geneva Convention III Relative to the Treatment of Prisoners of War 75 UNTS 135 58, 61, 71, 72, 203, 222, 224, 225, 226, 228, 240, 246, 247, 258, 393
- 12.08.1949 Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War 75 UNTS 287 58, 61, 71, 72, 205, 211, 222, 228, 233, 240, 243, 246, 248, 254, 258, 259, 293, 393
- 04.11.1950 European Convention for the Protection of Human Rights and Fundamental Freedoms 213 UNTS 221 10, 206, 296
- 28.07.1951 Convention Relating to the Status of Refugees 189 UNTS 137 78
- 14.05.1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict 249 UNTS 240 222, 248
- 07.09.1956 UN Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery 226 UNTS 3 203, 281
- 13.12.1957 European Convention on Extradition ETS 24 75–6, 77, 79, 80, 82, 83, 84, 85
- 20.04.1959 European Convention on Mutual Assistance in Criminal Matters ETS 30 74, 87
- 18.04.1961 Vienna Convention on Diplomatic Relations 500 UNTS 95 424
- 24.04.1963 Vienna Convention on Consular Relations 596 UNTS 261 145, 425
- 14.09.1963 Convention on Offences and Certain Other Acts Committed on Board Aircraft (the Tokyo Convention) 1248 UNTS 451 285
- 16.12.1966 International Covenant on Civil and Political Rights 999 UNTS 171 10, 13, 206
- 26.11.1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, GA Resolution 2931 754 UNTS 73 65, 189, 191, 218
- 22.05.1969 Vienna Convention on the Law of Treaties 1155 UNTS 331 60, 123, 140, 406
- 22.11.1969 Inter-American Convention on Human Rights PAUTS 36 370, 372
- 8.12.1969 Convention on Special Missions 1440 UNTS 231 426
- 28.05.1970 European Convention on the International Validity of Criminal Judgments ETS 70 88
- 16.12.1970 Convention for the Suppression of Unlawful Seizure of Aircraft (the Hague Convention) 860 UNTS 105 205, 285
- 02.02.1971 Organization of American States: Convention to Prevent and Punish Acts of Terrorism Taking the Form of Crimes against Persons and Related Extortion that are of International Significance 1438 UNTS 195 288
- 23.09.1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (the Montreal Convention) 974 UNTS 177 285
- 10.04.1972 UN Convention on Prohibition of the Development, Production and Stockpiling of Bacteriological, Biological and Toxin Weapons and their Destruction 1015 UNTS 164 222, 255
- 15.05.1972 European Convention on the Transfer of Proceedings in Criminal Matters ETS 73 77, 88
- 30.11.1973 International Convention on the Suppression and Punishment of the Crime of Apartheid 1015 UNTS 243 54, 58, 120, 189, 191, 218, 281

- 14.12.1973 Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents 1035 UNTS 167 285
- 25.01.1974 European Convention on the Non-Applicability of Statutory Limitations to Crimes Against Humanity and War Crimes ETS 82 65
- 15.10.1975 Additional Protocol to the European Convention on Extradition ETS 86 76, 79, 82
- 27.01.1977 European Convention on the Suppression of Terrorism 113 UNTS 93 79, 288
- 08.06.1977 Protocol I Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims in International Armed Conflict 1125 UNTS 3 222
- 08.06.1977 Protocol II Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of Non-International Armed Conflicts 1125 UNTS 609 222
- 17.03.1978 Second Additional Protocol to the European Convention on Extradition ETS 98 79, 84
- 17.03.1978 Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters ETS 99 74, 87
- 18.12.1979 International Convention against the Taking of Hostages 1316 UNTS 205 40, 246, 285
- 03.03.1980 Convention on the Physical Protection of Nuclear Material 1456 UNTS 101 285
- 10.10.1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be Deemed to Be Excessively Injurious or to have Indiscriminate Effects 1342 UNTS 137 222
- 25.02.1981 Inter-American Extradition Convention OAS TS 60 83, 84
- 27.06.1981 African Charter on Human and Peoples Rights 1520 UNTS 26,363, 21 ILM (1982) 58 206
- 10.12.1982 UN Law of the Sea Convention 1833 UNTS 397 281
- 21.03.1983 Convention on the Transfer of Sentenced Persons ETS 112 88
- 28.04.1983 Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty ETS 114 394
- 22.11.1984 Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms ETS 117 67
- 09.12.1985 Inter-American Convention to Prevent and Punish Torture
- 10.12.1984 Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment and Punishment 1465 UNTS 85 206
- 09.12.1985 Inter-American Convention to Prevent and Punish Torture OAS TS 67
- 04.11.1987 South Asian Association for Regional Co-operation: Regional Convention on Suppression of Terrorism 288
- 24.02.1988 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation 1589 UNTS 474 285

- 10.03.1988 Convention on the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (the SUA Convention) 1678 UNTS 221 288
- 10.03.1988 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf 1678 UNTS 303 285
- 20.12.1988 UN Convention Against the Illicit Trafficking in Narcotic Drugs and Psychotropic Substances 1019 UNTS 175 281
- 20.11.1989 United Nations Convention on the Rights of the Child 1577 UNTS 3 222, 260
- 15.12.1989 Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty GA resolution 44/128 10
- 27.04.1990 Commonwealth Scheme for the Rendition of Fugitive Offenders (1990) 16 *Commonwealth Law Bulletin* 1036 84
- 19.06.1990 Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (Convention Implementing the Schengen Agreement) OJ L239 22.9.2000 pp. 19–62 67, 77
- 08.11.1990 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime ETS 141 77
- 14.12.1990 United Nations Model Treaty on Extradition, GA resolution 45/116 72, 84
- 14.12.1990 United Nations Model Treaty on Mutual Assistance in Criminal Matters, GA resolution 45/117 72, 74, 87
- 14.12.1990 United Nations Model Treaty on Transfer of Proceedings in Criminal Matters, GA resolution 45/118 72
- 14.12.1990 United Nations Model Treaty on Transfer of Supervision of Conditionally Sentenced or Conditionally Released, GA resolution 45/119 72
- 01.03.1991 Convention on the Marking of Plastic Explosives for the Purpose of Detection 30 ILM 726 285
- 03.09.1993 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction 1975 UNTS 469 222
- 25.05.1993 Statute of the International Criminal Tribunal for the Former Yugoslavia, annexed to Security Council resolution 827(1993) (with later amendments) 10, 13, 68, 103, 104, 111, 113, 189, 191, 193, 197, 200, 204, 208, 214, 219, 225, 228, 240, 241, 243, 244, 246, 253, 254, 343, 351, 355, 356, 357, 358, 360, 362, 363, 365, 367, 368, 374, 375, 376, 379, 386, 387, 388, 390, 391, 394, 397, 400, 401, 402, 406, 410, 411, 412, 414, 416, 418, 429, 439, 451
- 09.06.1994 Inter-American Convention on the Forced Disappearance of Persons 33 ILM (1994) 1529 189, 191, 217
- 08.11.1994 Statute of the International Criminal Tribunal for Rwanda, annexed to Security Council resolution 955(1994) (with later amendments) 48, 68, 113, 152,

- 171, 189, 191, 192, 193, 194, 200, 208, 214, 219, 225, 228, 230, 241, 243, 245, 246, 254, 343, 351, 355, 356, 357, 358, 360, 362, 365, 367, 368, 372, 374, 375, 376, 379, 386, 387, 388, 390, 391, 394, 396, 397, 400, 401, 402, 406, 412, 414, 416, 418, 429, 439, 457
- 09.12.1994 UN Convention on the Safety of United Nations and Associated Personnel, GA resolution 49/59 2051 UNTS 391 248, 285
- 10.03.1995 Convention on Simplified Extradition Procedure between the Member States of the European Union OJ C78 30.3.1995 p. 2 80
- 14.12.1995 General Framework Peace Agreement for Peace in Bosnia and Herzegovina (Dayton Peace Agreement) 35 ILM 75 56, 107, 155, 159, 406, 439
- 27.09.1996 Convention relating to Extradition between the Member States of the European Union OJ C313 13.10.1996 p. 12 80
- 30.11.1996 Abidjan Peace Accord <http://www.sc-sl.org/abidjanaccord.html> 152
- 03.12.1997 Ottawa Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction 2056 UNTS 241 222, 256
- 15.12.1997 International Convention for the Suppression of Terrorist Bombings (Terrorist Bombing Convention), GA resolution 52/164 2149 UNTS 284 282, 283, 285, 286, 289, 290, 309
- 18.12.1997 Additional Protocol to the Convention on the Transfer of Sentenced Persons ETS 167 88
- 22.04.1998 Arab Convention on the Suppression of Terrorism (the Arab Convention) reprinted in *International Instruments Related to the Prosecution and Suppression of International Terrorism* UN Pub Sales No. E.03. V.9 (2004) 288, 289
- 17.07.1998 Rome Statute of the International Criminal Court 2187 UNTS 90 16, 124, 126, 142, 143, 144–5, 174, 251, 282
- 26.03.1999 Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict 38 ILM 769 222, 249
- 04.06.1999 Treaty on Cooperation among the States Members of the Commonwealth of Independent States in Combating Terrorism (the CIS Convention) reprinted in *International Instruments Related to the Prosecution and Suppression of International Terrorism* UN Pub Sales No. E.03. V.9 (2004) 288
- 01.07.1999 Convention of the Organization of the Islamic Conference on Combating International Terrorism reprinted in *International Instruments Related to the Prosecution and Suppression of International Terrorism* UN Pub Sales No. E.03. V.9 (2004) 288
- 07.07.1999 Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone (Lomé Peace Agreement) <http://www.sc-sl.org/lomeaccord.html> 151
- 14.07.1999 OAU Convention on the Prevention and Combating of Terrorism reprinted in *International Instruments Related to the Prosecution and Suppression of International Terrorism* UN Pub Sales No. E.03. V.9 (2004) 288, 289, 291

- 09.12.1999 International Convention for the Suppression of the Financing of Terrorism (the Terrorist Financing Convention) GA resolution 54/109, 2178 UNTS 229 73, 87, 285, 287, 290, 291
- 25.05.2000 Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, GA resolution 54/263 39 ILM 1285 222, 260
- 29.05.2000 Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union OJ C197 12.7.2000 p. 1 74, 87
- 15.11.2000 United Nations Convention against Transnational Organized Crime (Palermo Convention); Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime; Protocol against the Smuggling of Migrants by Land, Air and Sea, supplementing the United Nations Convention against Transnational Organized Crime, GA resolution 55/25 40 ILM 335, 377, 384 73, 74, 76, 83, 87, 281
- 31.05.2001 Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime, GA resolution 55/255 281
- 16.10.2001 Protocol to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union OJ C326 21.11.2001 p. 1 74, 87
- 8.11.2001 Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters ETS 182 74, 87
- 23.11.2001 Convention on Cyber Crime ETS 185 87
- 16.01.2002 Agreement Between the United Nations and Sierra Leone on the Establishment of a Special Court (draft Agreement annexed to UN Doc S/2000/015) 150, 442
- 16.01.2002 Statute of the Special Court for Sierra Leone 68, 150, 151, 152, 193, 201, 229, 248, 259, 260, 302, 305, 310, 313, 316, 322, 343, 443, 451
- 13.06.2002 Council Framework Decision on the European Arrest Warrant and the Surrender Procedures between Member States OJ L190, 18.7.2002, pp. 1–20 74, 75, 76, 77, 83, 84, 85
- 13.06.2002 Council Framework Decision on Combating Terrorism OJ L164 22.6.2002 pp. 3–7 74, 76, 77, 83, 84, 85
- 09.09.2002 Agreement on Privileges and Immunities of the International Criminal Court ICC-ASP/1/3 124, 126
- 06.06.2003 Agreement Between the UN and the Royal Government of Cambodia Concerning the Prosecution Under Cambodian Law of Crimes Committed During the Period of Democratic Kampuchea (draft Agreement annexed to GA resolution 57/228B) 153, 154
- 22.07.2003 Council Framework Decision on the Execution in the European Union of Orders Freezing Property or Evidence OJ L196 2.8.2003 pp. 45–55 87
- 31.10.2003 United Nations Convention against Corruption GA resolution 58/4, (2004) 43 ILM 37 281

- 04.10.2004 Relationship Agreement between the International Criminal Court and the United Nations ICC-ASP/3/Res.1 144, 411
- 24.02.2005 Council Framework Decision on the Application of the Principle of Mutual Recognition to Financial Penalties OJ L76 22.3.2005 pp. 16–30 88
- 13.04.2005 International Convention for the Suppression of Acts of Nuclear Terrorism (the Nuclear Terrorism Convention) GA resolution 59/290, 44 ILM 801 285
- 03.05.2005 European Convention on the Prevention of Terrorism ETS 196 288
- 23.09.2005 Draft International Convention for the Protection of all Persons from Enforced Disappearance (UN Doc. E/CN.4/2005/WG.22/WP.1/REV.4), adopted by the Human Rights Council 29.06.2006 (resolution A/HRC/1/L.2) 217, 281
- 09.10.2005 Statute of the Higher Iraqi Criminal Court, Law No. (10) 2005 (previously called the Iraqi Special Tribunal) Official Gazette of the Republic of Iraq No. 4006 18.10.2005 161
- 28.04.2006 Agreement between the International Criminal Court and the European Union on Cooperation and Assistance ICC-PRES/01-01-06 411
- 20.12.2006 International Convention for the Protection of all Persons from Enforced Disappearance GA resolution 61/177 281

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
AU	African Union
BFSP	British and Foreign State Papers
BYBIL	<i>British Yearbook of International Law</i>
CAT	Convention Against Torture
CIS	Commonwealth of Independent States
CLF	<i>Criminal Law Forum</i>
CMR	Court Martial Reports
CPA	Coalition Provisional Authority
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
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
<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 Law</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
NJIL	<i>Nordic Journal of International Law</i>
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
PAUTS	Pan-American Union Treaty Series
PCIJ	Permanent Court of International Justice
PTC	Pre-Trial Chamber
RPE	Rules of Procedure and Evidence
SC	Security Council
SCR	Supreme Court Reports
SICT	Supreme Iraqi Criminal Tribunal
SCSL	Special Court for Sierra Leone
SFOR	Stability Force (NATO-led force deployed in Bosnia)
SOFA	Status of forces agreement
T.Ch.	Trial Chamber
UKTS	United Kingdom Treaty Series
UN	United Nations
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>

Book titles and their abbreviations as used in the text

- Antonio Cassese, Paolo Gaeta and John R.W.D. Jones (eds.), *The Rome Statute of the International Criminal Court: A Commentary* (Oxford, 2002): Cassese, *Commentary*
- Roy Lee *et al.* (eds.), *The International Criminal Court – The Making of the Rome Statute: Issues, Negotiations, Results* (The Hague, 1999): Lee, *The Making of the Rome Statute*
- Roy Lee *et al.* (eds.), *The International Criminal Court – Elements of Crimes and Rules of Procedure and Evidence* (New York, 2001): Lee, *Elements and Rules*
- Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law* (Cambridge, 2000), vol. I: Henckaerts & Doswald-Beck, *ICRC Customary Law*
- Otto Triffterer (ed.), *Commentary on the Rome Statute of the International Criminal Court: Observers' Notes* (Baden-Baden, 1999): Triffterer, *Observers' Notes*

PART A

Introduction

1

Introduction: What is International Criminal Law?

1.1 International criminal law

International law typically governs the rights and responsibilities of States;¹ criminal law, conversely, is paradigmatically concerned with prohibitions addressed to individuals, violations of which are subject to penal sanction by a State.² The development of a body of international criminal law which imposes responsibilities directly on individuals and punishes violations through international mechanisms is relatively recent. It was not until the 1990s, with the establishment of the ad hoc Tribunals for the former Yugoslavia and for Rwanda, that it could be said that an international criminal law regime had evolved. This is a relatively new body of law which is not yet uniform, nor are its courts universal.

International criminal law developed from various sources. War crimes originate from the ‘laws and customs of war’, which accord certain protections to individuals in conflict situations. Genocide and crimes against humanity evolved to protect persons from gross human rights abuses including those committed by their own governments. With the probable exception of the crime of aggression with its focus on inter-State conflict, the concern of international criminal law is now with individuals and with their protection from wide-scale atrocities. As was said by the Appeal Chamber in the *Tadić* case in the International Criminal Tribunal for the former Yugoslavia (ICTY):

A State-sovereignty-oriented approach has been gradually supplanted by a human-being-oriented approach ... [I]nternational law, while of course duly safeguarding the legitimate interests of States, must gradually turn to the protection of human beings ...³

The meaning of the phrase ‘international criminal law’ depends on its use, but there is a plethora of definitions, not all of which are consistent. The most dedicated chronicler of uses of ‘international criminal law’, Georg Schwarzenberger,⁴ described six

¹ See, e.g. Robert Jennings and Arthur Watts (eds.), *Oppenheim's International Law* (9th edn, London, 1994) 5–7.

² Glanville Williams, ‘The Definition of Crime’ (1955) 8 *Current Legal Problems* 107.

³ *Tadić* ICTY A. Ch. 2.10.1995 para. 97.

⁴ Georg Schwarzenberger, ‘The Problem of an International Criminal Law’ (1950) 3 *Current Legal Problems* 263.

different meanings that have been attributed to it, all of which related to international law, criminal law and their interrelationship, but none of which referred to any existing body of international law which directly created offences that could be committed by individuals; Schwarzenberger believed that no such law existed at the time. 'An international crime', he said in reference to the question of the status of aggression, 'presupposes the existence of an international criminal law. Such a branch of international law does not exist.'⁵

Cherif Bassiouni,⁶ on the other hand (and writing almost half a century later), listed 25 categories of international crimes, being crimes which affect a significant international interest or consist of egregious conduct offending commonly shared values, which involve more than the State because of differences of nationality of victims or perpetrators or the means employed, or which concern a lesser protected interest which cannot be defended without international criminalization. His categories include, as well as the more familiar ones, traffic in obscene materials, falsification and counterfeiting, damage to submarine cables, and unlawful interference with mail.

Different meanings of international criminal law have their own utility for their different purposes and there is no reason to decide upon one meaning as the 'right' one.⁷ Nevertheless, it is advisable from the outset to be clear about the sense in which the term is used in any particular situation. In this chapter we will attempt to elaborate the meaning which we give to the term for the purposes of this book and compare it with others.

1.1.1 Crimes within the jurisdiction of an international court or tribunal

The approach taken in this book is to use 'international crime' to refer to those offences over which international courts or tribunals have been given jurisdiction under general international law. They comprise the so-called 'core' crimes of genocide, crimes against humanity, war crimes, and the crime of aggression (also known as the crime against peace). Our use thus does not include piracy, slavery, torture, terrorism, drug trafficking, and many crimes which States Parties to various treaties are under an obligation to criminalize in their domestic law. But because a number of the practical issues surrounding the repression of these crimes are similar to those relating to international crimes, they are discussed in this book, although only terrorist offences and torture will be discussed in any detail. Some of them (terrorist offences, drug trafficking and individual acts of torture) have been suggested as suitable for inclusion within the jurisdiction of the International Criminal Court (ICC)⁸ and may therefore constitute international crimes within our meaning at some time in the future.

⁵ Georg Schwarzenberger, 'The Judgment of Nuremberg' (1947) 21 *Tulane Law Review* 329 at 349.

⁶ M. Cherif Bassiouni, 'The Sources and Content of International Criminal Law: A Theoretical Framework' in M. Cherif Bassiouni (ed.), *International Criminal Law* (2nd edn, New York, 1999), vol. I, 32, 33.

⁷ But omnibus uses of 'international criminal law' risk implying that there is a structural unity to what is being referred to, and thus treating very different things as having similarities. For an example, see Barbara Yarnold, 'Doctrinal Basis for the International Criminalisation Process' (1994) 4 *Temple International and Comparative Law Journal* 85.

⁸ See Final Act of the Rome Conference A/CONF.183/10, Res. E.

Our approach does not differentiate the core crimes from others as a matter of principle, but only pragmatically, by reason of the fact that no other crimes are currently within the jurisdiction of international courts. However, it is clear that since these crimes have a basis in international law, they are also regarded by the international community as violating or threatening values protected by general international law.

‘International criminal law’, as used in this book, encompasses not only the law concerning genocide, crimes against humanity, war crimes and aggression, but also the principles and procedures governing the international investigation and prosecution of these crimes. As we shall see, in practice the greater part of the enforcement of international criminal law is undertaken by domestic authorities. The principle of complementarity, which is fundamental to the whole of international criminal law enforcement, shows that national courts both are, and are intended to be, an integral and essential part of the enforcement of international criminal law.⁹ In this book therefore we shall cover not only the international prosecution of international crimes, but also various international aspects of their domestic investigation and prosecution.

1.2 Other concepts of international criminal law

1.2.1 *Transnational criminal law*

Until the establishment of the international courts and tribunals in the 1990s, the concept of international criminal law tended to be used to refer to those parts of a State’s domestic criminal law which deal with transnational crimes, that is, crimes with actual or potential transborder effects. This body of law is now more appropriately termed ‘transnational criminal law’. A similar terminological distinction between ‘international criminal law’ (criminal aspects of international law) and ‘transnational criminal law’ (international aspects of national criminal law) can also be found in other languages, such as German (*‘Völkerstrafrecht’* compared with *‘Internationales Strafrecht’*), French (*‘droit international pénal’* and *‘droit pénal international’*) and Spanish (*‘derecho internacional penal’* and *‘derecho penal internacional’*).

Transnational criminal law includes the rules of national jurisdiction under which a State enacts and enforces its own criminal law where there is some transnational aspect of a crime. It also covers methods of cooperation among States to deal with domestic offences and offenders where there is a foreign element and the treaties which have been concluded to establish this inter-State cooperation. These treaties provide for mutual legal assistance between States in respect of crimes with a foreign element, and extradition of offenders by one State for prosecution in another State. Other treaties require States to criminalize certain conduct by creating offences in their domestic law

⁹ This is particularly the case with the ICC; see Arts. 17 and 18 of the ICC Statute. As to the situation generally, Judges Higgins, Kooijmans and Buergenthal have stated: ‘the international consensus that the perpetrators of international crimes should not go unpunished is being advanced by a flexible strategy, in which newly established international criminal tribunals, treaty obligations and national courts all have their part to play.’ *Case concerning the Arrest Warrant of 11 April 2000 (Democratic Republic of Congo v. Belgium)* 14.2.2002 Separate Opinion para. 51.

and to bring offenders to justice if found on their territory, or to extradite them to States that will prosecute. While international law is thus the source of a part of this group of rules, the source of criminal prohibitions on individuals is national law.¹⁰

Until recently, there was not a clear distinction in the literature between international criminal law with its more restricted meaning and transnational law. Transnational law, with its focus on domestic criminal law and on methods of inter-State cooperation in the sphere of criminal law, remains the body of ‘international criminal law’ with which national legal practitioners are most familiar. Providing full coverage of this body of law would require a volume in its own right. Our discussion of it will address only issues of State jurisdiction, such obstacles to national prosecution as immunities, and State cooperation in national proceedings relating to international crimes; we deal with ‘transnational crimes’ only in so far as they raise cognate issues to international crimes.

1.2.2 International criminal law as a set of rules to protect the values of the international order

Another, and more substantive, approach to determining the scope of ‘international criminal law’ is to look at the values which are protected by international law’s prohibitions.¹¹ Under this approach international crimes are considered to be those which are of concern to the international community as a whole (a description which is not of great precision), or acts which violate a fundamental interest protected by international law. Early examples include the suppression of the slave trade. The ICC Statute uses the term ‘the most serious crimes of concern to the international community as a whole’ almost as a definition of the core crimes,¹² and recognizes that such crimes ‘threaten the peace, security and well-being of the world’.¹³

It is of course true that those crimes which are regulated or created by international law are of concern to the international community; they are usually ones which threaten international interests or fundamental values.¹⁴ But there can be a risk in defining international criminal law in this manner, as it implies a coherence in the international criminalization process which may not exist. The behaviour which is directly or indirectly subject to international law is not easily reducible to abstract formulae. Even if it were, it is not clear that these formulae would be sufficiently determinate to provide a useful guide for the future development of law, although arguments from coherence with respect to the ambit of international criminal law can

¹⁰ See generally, Neil Boister, ‘Transnational Criminal Law?’ (2003) 14 *EJIL* 953 at 967–77.

¹¹ For discussion in relation to the core crimes, see Bruce Broomhall, *International Justice and the International Criminal Court: Between State Sovereignty and the Rule of Law* (Oxford, 2003) 44–51.

¹² Arts. 1 and 5(1). The International Law Commission framed its investigation into international criminal law in the broad sense as being one into the ‘Crimes against the Peace and Security of Mankind’: Draft Code of Crimes Against the Peace and Security of Mankind, in Report of The International Law Commission on the Work of its Forty-Eighth Session, UN Doc. A/51/10. See also Lyal Sunga, *The Emerging System of International Criminal Law* (The Hague, 1997).

¹³ ICC Statute, para. 3 of the Preamble.

¹⁴ Bassiouni, ‘The Sources and Content of International Criminal Law’, 98.

have an impact on the development of the law (as has occurred in relation to the law of war crimes in non-international armed conflict).¹⁵

1.2.3 *Involvement of a State*

Another approach to defining ‘international crimes’ relies upon State involvement in their commission.¹⁶ There is some sense in this. For example, aggression is necessarily a crime of the State, committed by high-level State agents. War crimes, genocide and crimes against humanity often, perhaps typically, have some element of State agency. But the subject matter of international criminal law, as we use it, deals with the liability of individuals, irrespective of whether or not they are agents of a State. In the definition of the crimes which we take as being constitutive of substantive international criminal law, the status of the perpetrator is irrelevant, with the exception of the crime of aggression.¹⁷

1.2.4 *Crimes created by international law*

An international crime may also be defined as an offence which is created by international law itself, without requiring the intervention of domestic law. In the case of such crimes, international law imposes criminal responsibility directly on individuals. The classic statement of this form of international criminal law comes from the Nuremberg International Military Tribunal’s seminal statement that

crimes against international law are committed by men, not abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced . . . individuals have international duties which transcend the national obligations of obedience imposed by the individual state.¹⁸

The definition of an international crime as one created by international law is now in frequent use.¹⁹ But this criterion may lead to fruitless debate as to what is and what is not ‘created’ by international law.²⁰ The more pragmatic meaning used in this book, which we do not claim is authoritative, excludes from detailed discussion certain

¹⁵ On such developments, see chapter 12.

¹⁶ See, e.g. M. Cherif Bassiouni, *Crimes Against Humanity In International Criminal Law* (2nd edn, The Hague, 1999) 243–6, 256.

¹⁷ The reference in Art. 8(2)(b)(viii), ICC Statute, to the transfer of population ‘by the Occupying Power’ would also seem to require that the perpetrator is a State agent.

¹⁸ Nuremberg IMT: Judgment and Sentences (1947) 41 *AJIL* 172 at 221.

¹⁹ Broomhall, *International Justice and the International Criminal Court*, 9–10; Robert Cryer, *Prosecuting International Crimes: Selectivity in the International Criminal Law Regime* (Cambridge, 2005) 1; Hans-Heinrich Jescheck, *Die Verantwortlichkeit der Staatsorgane nach Völkerstrafrecht* (Bonn, 1951) 9; Otto Triffterer, *Dogmatische Untersuchungen zur Entwicklung des materiellen Völkerstrafrechts seit Nürnberg* (Freiburg im Breisgau, 1966) 34; Gerhard Werle, *Principles of International Criminal Law* (The Hague, 2005) 25.

²⁰ A slightly different criterion of an international offence, one with a ‘definition as a punishable offence in international (and usually conventional) law’ leads to the inclusion of a much wider category of crimes, including hijacking, injury to submarine cables and drugs offences (Yoram Dinstein, ‘International Criminal Law’ (1975) 5 *Israel Yearbook on Human Rights* 55 at 67).

conduct which has been suggested to be subject to direct liability in international criminal law but which others dispute, such as piracy and slavery,²¹ a general offence of terrorism,²² and individual acts of torture.²³

Occasionally the *sui generis* penal system of the international criminal tribunals and courts is described as ‘supranational criminal law’ in process of development.²⁴ This term is somewhat misleading since it is normally reserved for law imposed by supranational institutions and not treaty-based or customary international law;²⁵ the ICTY, International Criminal Tribunal for Rwanda (ICTR) and ICC are not supranational in nature, neither as institutions nor as regards the laws they enforce.

1.3 Sources of international criminal law

As international criminal law is a subset of international law, its sources are those of international law. These are usually considered to be those enumerated in Article 38(1) (a)–(d) of the Statute of the International Court of Justice, in other words, treaty law, customary law, general principles of law and, as a subsidiary means of determining the law, judicial decisions and the writings of the most qualified publicists. As will be seen, all of these have been used by the ad hoc Tribunals. They are available for use by national courts in so far as the national system concerned will allow. The ICC Statute contains its own set of sources for the ICC to apply, which are analogous, although by no means identical, to those in the ICJ Statute.²⁶

1.3.1 Treaties

Treaty-based sources of international criminal law, either directly or as an aid to interpretation, include the 1907 Hague Regulations, the 1949 Geneva Conventions (and their additional protocols) and the Genocide Convention. They form the basis for many of the crimes within the jurisdiction of the ad hoc Tribunals and the ICC. The Statute of the ICC, which sets out the definitions of crimes within the jurisdiction of the ICC, is, of course, itself a treaty. Security Council resolutions 827(2003) and 955(2004), which set up the ICTY and ICTR respectively, were adopted by the Security Council pursuant to its powers under Chapter VII of the UN Charter, and thus find their binding force in Article 25 of the Charter. Their source is therefore a treaty. The Statutes of the Tribunals have had an important effect on the substance of international criminal law both directly, as applied by the Tribunals, and indirectly as

²¹ See, e.g. Broomhall, *International Justice and the International Criminal Court*, 23–4.

²² See, e.g. Antonio Cassese, *International Criminal Law* (Oxford, 2003) 128–30. ²³ *Ibid.*, 117–20.

²⁴ E.g. Roelof Haverman, Olga Kavran and Julian Nicholls (eds.), *Supranational Criminal Law: A System Sui Generis* (Antwerp, 2003).

²⁵ See, e.g. Werle, *Principles of International Criminal Law*, 38–9, and Bassiouni, ‘The Sources and Content of International Criminal Law’, 4–5.

²⁶ Art. 21 of the ICC Statute.