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DEFENSE IN INTERNATIONAL CRIMINAL PROCEEDINGS

Cases, Materials and Commentary

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Transnational Publishers

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"To no one will we sell, to no one deny or delay, right or justice."

MAGNA CARTA, (40), 1215

FOREWORD

International criminal tribunals reflect an international criminal justice model, referred to as the direct enforcement system, meaning that enforcement does not go through state systems of justice. Ideally, a direct international criminal justice enforcement system is independent of national ones, and is therefore not subject to the sovereign powers of the different states. Such a system would operate at a supra-national level. For all practical purposes, there has never been such a system in the history of law and legal institutions. The 1474 Breisach trial, a judicial body which represented the 26 member states of the Holy Roman Empire, prosecuted Peter von Hagenbach, for what was then known as "*crimes against the laws of God and Man.*"[1] Von Hagenbach was the representative of the Duke of Burgundy, in the administration of the city of Breisach where these crimes were committed. The composition of the tribunal was international and it had the power to enforce its judgment, which in the case of Peter Von Hagenbach was to be drawn and quartered. Von Hagenbach acted on the specific orders of the Duke of Burgundy, but he was not allowed to introduce that defense. Would the outcome have been different if Von Hagenbach had effective outside counsel? Would the responsibility have befallen the Duke of Burgundy? Not likely, because the Duke would not have been judged in absentia by proxies of his peers. However, an effective counsel would have made a strong historic record, making it more difficult in the future to have scapegoats pay for their masters, while the latter evaded responsibility.

After WWI, the efforts to establish an international tribunal to prosecute Kaiser Wilhelm II and other German war criminals, pursuant to Articles 227, 228 and 229 of the treaty of Versailles, never materialized.[2] The few German officers and soldiers who were prosecuted were tried by the German Supreme Court sitting in Leipzig and applying German criminal law and procedure as it existed in 1922–23. At these trials, German defense lawyers had the full latitude of German law, and they used it, including swaying the public's sympathy. In these cases, the German judges proved to be fair and rigorous.

After WWII, the International Military Tribunal sitting at Nuremberg (IMT) and the International Military Tribunal for the Far East sitting in Tokyo (IMTFE) were respectively created by a treaty between the four major allies, signed in London August 8, 1945, and by a proclamation by the Supreme Allied Military Commander for the Far East, January 19, 1946. The London agreement as it was called, to which the charter of the IMT was appended, was acceded to by 19 states. The charter of the IMTFE, which was nearly identical to that of the IMT, was part of a proclamation by the Supreme Allied Commander. Why one institution was created by treaty and the other by a military order has only to do with the politics existing in the two theaters of operation, as well as the

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[1] *See* 2 GEORG SCHWARZENBERGER, INTERNATIONAL LAW 466 (1968), *quoting* 10 A.G. DE BARANTE, HISTOIRE DES DUCS DE BOURGOGNE DE LA MAISON DE VALOIS, 1364–1477 16 (1839)

[2] *See* M. Cherif Bassiouni, *World War I: "The War to End all Wars" and the Birth of a Handicapped International Criminal Justice System*, 30 DENV. J. INT'L L. & POL'Y 244 (2002); CLAUDE MULLINS, THE LEIPZIG TRIALS: AN ACCOUNT OF THE WAR CRIMINALS' TRIALS AND A STUDY OF GERMAN MENTALITY (1921).

roles of the respective allies in both these theaters of operation. In the Far East, the USSR had entered that theater of operation only three weeks before the end of the war, and had much less of a claim on its outcome than it did in the European theater. While the allies in Europe were willing to concede a greater role to the USSR in German and Eastern Europe, this was not the case for the Americans in the Far East, who did not want to give any prominent role to the USSR. These political factors, as well as others, had a great bearing on the rights of the defense, and on the ability of defense counsels to effectively represent their clients. It is evident that politics have an important role in the establishment of international judicial institutions. However, the role of politics extends beyond that, since justice outcomes are related to political agenda.

At the IMT, jurists of distinction had significantly greater weight with respect to the contents of the charter, as well as the proceedings of the Tribunal than those involved in IMTFE. With respect to the latter, the American and to some extent British military had the dominant role, and they were susceptible to their superiors wishes, in this case, General MacArthur. The stature and personalities of the judges and prosecutors of both tribunals also reveal a significant qualitative distinction as to the "equality of arms" of defense and prosecution. While the defense at Nuremberg was frequently stymied in its ability to introduce evidence, there was one case where the defense ran away from the Tribunal's control. This was the Goering case, in which he represented himself and for nearly three days he outmaneuvered U.S. Chief Prosecutor Robert Jackson. Over fifty years later, Slobodon Milosevic repeated that feat, abusing the rights of the defense by being obstreperous, and managing to delay the proceedings beyond reasonable expectations.

The IMTFE was by comparison to the IMT, much less rigorous in its proceedings with respect to fairness and impartiality of the judges, as well as their judicial demeanor.[3] The defense had much fewer opportunities to make an adequate representation of the defendants. The proceedings, modeled after the Common Law's adversary-accusatorial system, were quite alien to the Japanese legal system. Consequently, Japanese defense lawyers were mostly bewildered. Conversely, German lawyers appearing before the IMT and Subsequent Proceedings were for the most part lawyers steeped in the Germanic and Romanist-Civilist systems, and also quite conversant with the Common Law system.[4] More significantly, the German defense lawyers understood, as did their clients, that even though a trial had its political purposes, it was also a process which was part of their social system. The Japanese culture was entirely different. For them, a trial was nothing more than a way of humiliating not only the defendants, but the Japanese nation. Thus, for the Germans, the trials were a way of cleansing themselves of the errors of their leaders, while for the Japanese, it was a way of humiliating the people through their leaders.[5] The defense's strategies and roles were thus conditioned by these considerations.

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[3] This was particularly true of the presiding judge, who repeatedly came to the bench in the afternoons evidencing that he had imbibed alcohol, sometimes in significant quantities.

[4] For the impressions of three of these lawyers, see Carl Haensel, *The Nuremberg Trials Revisited*, 13 DEPAUL L. REV. 233 (1964); Otto Kranzbuhler, *Nuremberg Eighteen Years Afterwards*, 14 DEPAUL L. REV. 333 (1965); and Otto Pannenbecker, *The Nuremberg War Crimes Trial*, 14 DEPAUL L. REV. 348 (1965).

[5] General Douglas MacArthur in part understood that, and that is why he never ordered Emperor Hirohito prosecuted, and excluded most of Hirohito's family, particularly the Emperor's uncle, who directed the commission of the crimes committed by Japanese forces in Nanking, China in 1932.

Both the IMT and IMTFE were supplemented by national proceedings in Germany, pursuant to Control Council Order No. 10, and in the Far East, pursuant to the military authority of the allies in respect to the territories under their control. In Germany, military tribunals were set up by France, Great Britain, and the USSR, while the United States set up a special tribunal consisting of federal and state judges who were assigned to what was then called the American prosecutions, also held at Nuremberg. The quality of justice differed significantly between these four post-Nuremberg proceedings. Little is known about the USSR proceedings other than an estimated 10,000 persons who were given short trials and resulting in a substantial number of death penalties.[6] France and Great Britain conducted military trials in accordance with their own system of military justice, which provided fewer rights and guarantees to defendants and their counsels than did the American proceedings. The Americans, however, discredited themselves and their justice system in the prosecution of General Yamashita before a specially empanelled military commission in the Philippines. The command influence of General Macarthur, the five legally untrained military judges of that Commission, and the highly prejudiced procedures that they conducted were not one of the shining hours in the history of American military justice.[7] More significantly, the law was distorted in order to find General Yamashita guilty, and a new standard was established, namely, that a commander, "should have known" what potential crimes his troops may commit even though he had no such knowledge, nor could have foreseen them. The real hero in these proceedings was Captain Frank Reel who defended Yamashita, even though only a captain facing five generals sitting as judges, and knowing that the entire weight of the allied supreme commander, General Macarthur, was against him.[8] It shows that even under such circumstances, a committed defense lawyer can make a difference, if not for his client, then for posterity. It is in this way that law progresses and that the errors of the past are not repeated.

The post-WWII proceedings are a milestone in the history of international criminal justice, but they are not without their faults, to say the least, if only because they excluded the victors. It was clear that the establishment of such institutions constituted progress toward international criminal justice. It also brought about important substantive and procedural legal developments. However, these post-WWII proceedings were dominated by the Common Law's adversary-accusatorial model, which is in part understandable in view of the predominant role that America played in the war, as well as subsequently.

The development of international criminal justice institutions, and for that matter, of substantive international criminal law, was arrested between 1950 and 1990 as a result of the Cold war. The fall of the Berlin Wall in 1989 and the disintegration of the USSR brought about dramatic changes in many areas. When the Security Council in 1992 established, pursuant to Resolution 780, the Commission of Experts to Investigate Violations of International Humanitarian Law in the former Yugoslavia, it broke down

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[6] There is no reliable information on the numbers, as the USSR never disclosed them.

[7] It was also a shameful withdrawal by the United States Supreme Court, which refused to entertain a *habeus corpus* petition in this case. *See* In Re Yamashita, 327 U.S. 1 (1945) and particularly the extraordinary dissents of Justices Murphy and Rutledge, *id.* at 26 *et seq.* *See also* M. CHERIF BASSIOUNI, CRIMES AGAINST HUMANITY IN INTERNATIONAL CRIMINAL LAW 419–445 (2d rev. ed. 1999); M. Cherif Bassiouni, *Establishing an International Criminal Court: Historical Survey*, 149 MILITARY LAW REVIEW 49 (1995).

[8] *See* A. FRANK REEL, THE CASE OF GENERAL YAMASHITA (1949).

the forty-year old barrier that had impeded the progress of international criminal law.[9] In short succession, the Security Council established the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), and in 1998, the United Nations Diplomatic Conference held in Rome adopted the treaty and statute of the International Criminal Court (ICC). The long-awaited goal of establishing a permanent international criminal court had thus been achieved.

During the short period of 1994–2000, international criminal justice also proceeded along different models referred to as mixed models, with applications in Kosovo, East Timor, and Sierra Leone. These mixed models are also a reflection of *realpolitik* seeking to accommodate itself with as little accountability as possible.[10]

None of these institutions from 1992 to date, including the ICC, is truly a direct enforcement model, since they are not supra-national, and require the voluntary cooperation of states.[11] Thus, their effectiveness depends on extrinsic factors, namely the degree to which states will cooperate with the institution in question, including cooperation in securing evidence and in affording the defense investigatory rights.

All of these institutions have followed the adversary-accusatorial model, and more particularly its American version, thus rejecting without much wisdom some important features of the so-called inquisitorial model.[12] This influence on international and mixed judicial settings[13] is also due to the evolution of international human rights norms and standards applicable to criminal proceedings.[14]

The post-WWII period brought about an extraordinary development, namely, the United Nations human rights system. As of 1950, an even more extraordinary development occurred in Europe with the adoption of the European Convention on Fundamental Freedoms and the Protection of Human Rights and its enforcement mechanism,[15] fol-

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[9] *See* Final Report of the Commission of Experts Established Pursuant to Security Council Resolution 780 (1992), U.N. SCOR, Annex, U.N. Doc. S/1994/674 (27 May 1994); Annexes to the Final Report, U.N. SCOR, 49th Sess., U.N. Doc.S/1994/674/Add.2 (1994).

[10] See M. Cherif Bassiouni, *Accountability for Violations of International Humanitarian Law and Other Serious Violations of Human Rights, in* POST-CONFLICT JUSTICE 3 (M. Cherif Bassiouni ed., 2002). For specific mixed model case-studies, see the various articles in POST-CONFLICT JUSTICE (M. Cherif Bassiouni ed., 2002), at 429–828.

[11] Except, in connection with the ICTY/ICTR, the Security Council deems a member state of the United Nations to be in breach, and imposes a direct order or sanction.

[12] The inquisitorial system is erroneously assumed to be inquisitional as opposed to simply inquisitorial, in the sense that there is an investigative judge who conducts an independent inquiry into the facts before a person is remanded to trial proceedings. The use of a judge of instruction in complex investigations would have probably been a better approach than having investigations done by prosecutors and then giving the defense discovery rights to check or challenge the prosecutor's investigation. An investigative judge could follow different protocols approved by the pre-trial chamber, and give access to the defense without duplicating defense costs in doing independent investigations.

[13] *See* M. CHERIF BASSIOUNI, INTRODUCTION TO INTERNATIONAL CRIMINAL LAW (2004), at 545.

[14] *See* STEFAN TREGHSEL, HUMAN RIGHTS IN CRIMINAL PROCEEDINGS (2005); THE PROTECTION OF HUMAN RIGHTS IN THE ADMINISTRATION OF JUSTICE (M. Cherif Bassiouni ed., 1998); and HUMAN RIGHTS & THE ADMINISTRATION OF JUSTICE: INTERNATIONAL INSTRUMENTS (Christopher Gane & Mark Mackarel, eds., 1997).

[15] European Convention on Human Rights, Nov. 4, 1950, EUR. TS. Nos. 5, 213 U.N.T.S. 221.

lowed shortly thereafter by a similar treaty and human rights system under the Inter-American convention on Human Rights.[16] The combination of these two major regional treaties, as well as the many United Nations treaties starting with the Universal Declaration on Human Rights,[17] and the International Covenant on Civil and Political Rights,[18] firmly established certain basic procedural rights in criminal proceedings, including certain fundamental rights of the defense. Under the aegis of the United Nations a number of other treaties were developed which went into greater specificity as to the protection of human rights in the administration of justice which provided the defense with more specific rights.[19]

These developments at the international level, in turn, had an impact on the drafting of national constitutions which gradually incorporated many of the rights contained in these treaties.[20] National constitutions are interpreted and applied in national legal systems, and bring about changes in codes, laws and practices. In time, dogmatic differences distinguishing the inquisitorial and adversary-accusatorial systems eroded,[21] and a rapprochement between different legal procedural legal systems ensued. Necessarily, this evolutionary process had an impact on international judicial institutions. It was not, however, the product of classical comparative analysis methodology through which one would arrive at general principles.[22] Instead, it was an ad hoc evolutionary process which was the product of these different factors and influences.

The procedures and practices of the ICTY, which in turn influenced those of the ICTR, became the fulcrum of the new international criminal procedure, including the rights of the defense. There is no doubt that the ICTY procedures and practices influenced the drafters of the ICC.[23] The rules of procedure and evidence of the ICC and those of the ICTY/ICTR reveal a high degree of consistency. Thus today we have something that we can call international criminal procedure applicable to international criminal judicial institutions.

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[16] American Convention on Human Rights, Nov. 22, 1969, 1144 U.N.T.S 123, O.A.S.T.S. 36.

[17] Universal Declaration of Human Rights, Dec. 10, 1948, GA Res. 217 A (III), U.N. Doc. A/810 (1948).

[18] International Covenant on Civil and Political Rights, Dec. 19, 1966, 993 U.N.T.S. 3 (*entered into force* Jan. 3, 1976).

[19] *See supra* note 13.

[20] For a comparison of national constitutional rights and international treaty rights concerning the defense, see BASSIOUNI, INTRODUCTION, *supra* note 11 at 666–672.

[21] *See Inquisitorial-Accusatorial: The Collapse of Dogmas in Criminal Procedure?*, 68 REVUE INTERNATIONALE DE DROIT PENAL (1997); *Comparative Criminal Justice Systems: From Diversity to Rapprochement*, 17 NOUVELLES ETUDES PENALES (1998); Jean Pradel, *Procédure pénale comparée dans les systèmes modernes: Rapports de synthèse des colloques de l'ISISC*, 15 NOUVELLES ETUDES PENALES (1998). *See also* CRIMINAL JUSTICE BETWEEN CRIME CONTROL AND DUE PROCESS: CONVERGENCE AND DIVERGENCE IN CRIMINAL PROCEDURE SYSTEMS (Albin Eser & Christiane Rabenstein eds., 2004).

[22] *See* M. Cherif Bassiouni, *A Functional Approach to "General Principles of International Law,"* 11 MICH. J. INT'L L. 768 (1990).

[23] Many representatives of the ICTY came repeatedly to the sessions of the 1995 Ad Hoc Committee, the 1996–98 Preparatory Committee, and to the Rome Diplomatic Conference. They shared their experiences and expressed their views which were considered by the committee members and then the delegates to the diplomatic conference as being authoritative. *See e.g.* THE LEGISLATIVE HISTORY OF THE INTERNATIONAL CRIMINAL COURT (3 vols., M. Cherif Bassiouni ed., 2005).

An important part of the new international criminal procedure is of course the rights of the defense. Many of these rights can be found in the seminal treaties on human rights mentioned above,[24] as well as by reference to national constitutions.[25] More particularly, it is important to be able to find a comprehensive record of international institutions' practices. This is what this book accomplishes under the able editorship of Michael Bohlander, Richard Wilson and Roman Boed.

After and introduction and overview by Michael Bohlander in Chapter 1, Chapter 2 covers some of the procedural safeguards and rights of the defense in what its author, Richard Wilson, considers to be part of international human rights law. He then enunciates those rights which go from general representation to appeal, and also addresses defense rights in special proceedings, such as juvenile matters, capital cases, and military tribunals. His division into categories of defense rights is then followed in Chapters 4 on the ICTY, covered by Mónica Martínez and Michael Bohlander, and Chapter 5 on the ICTR covered by Roman Boed and Mandiaye Nyang. In Chapter 3, "A History of the Role of Defense Counsel in International Criminal and War Crimes Tribunals," Wilson addresses the rights of the defense as they existed in certain post-WWII proceedings.[26]

Chapters 4 and 5 address with meticulous detail the various rights of the defense, linking the respective statutes of the ICTY and ICTR, their rules of procedure and evidence, and their respective jurisprudence. There is no doubt that anyone who wants to know how the defense's rights worked in these two tribunals has only to read these two chapters to be fully informed.

Chapter 6, by Kenneth Gallant and Stephen Kirsch, deal with the International Criminal Court. They follow a slightly different approach than the one followed in Chapter 4, probably because the ICC does not yet have existing practice or jurisprudence. The authors follow a classic didactic approach whereby they identify the statute, the rules and regulations, academic writings and commentary. It is through this approach and by reference to the ICTY and ICTR that they describe various aspects of the right to counsel. The authors also deal with sections regarding ethics and disciplinary matters, the need for a code of professional conduct, and the role of the Assembly of States Parties. Like the preceding chapters, this one is also highly informative and detailed. It also follows the structured approach set up by the editors and evidenced throughout this book, particularly Wilson's Chapter 2.

Chapter 7 deals with a separate but related question, namely, the role of the new international professional associations. Stéphane Bourgon, Kennedy Ogetto, and Wolfgang Bendler address the development and role of associations of defense counsel. They also address issues of professional responsibility and a code of conduct, as well as the establishment of an international criminal bar association with its code of conduct and disciplinary proceedings. The chapter also deals with comparative European experiences, in particular, European defense counsel associations and organizations.

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[24] *See supra* note 13.

[25] *See* BASSIOUNI, INTRODUCTION TO ICL, *supra* note 19.

[26] Chapter 3 does not cover all of the Subsequent Proceedings in Europe or national proceedings in the Far East. However, the author does address the Eichmann and Barbie prosecutions, respectively in Israel and France, which are purely national prosecutions. A similar national prosecution is the *Finta* case in Canada.

Chapter 8 is a cooperative undertaking by several authors, namely Alan Simmons and Héleyn Uñac, who cover Kosovo under the UNMIK law; Silvia de Bertodano, who covers East Timor; Rupert Skilbeck, who covers Sierra Leone; Richard Wilson who covers Guanatanamo; Sarah Williams who covers Iraq, and Mohamed Othman and Scott Warden, who cover Cambodia. This chapter addresses the procedural rules and practices before the mixed tribunals and covers in detail issues pertaining to the rights of the defense.[27] The chapter also includes references to the eventual establishment of the special chambers for prosecutions in Cambodia pursuant to the UN—Cambodia agreement. It is very informative, and the documents contained therein are very useful.

What the collection of materials in this book reveals is a trend towards a supranational system of criminal procedure. In other words, an international common law of procedural norms and standards, which, though applicable to various types of international and inter-national institutions, could also one day ripen into an international standard for states. The European Union's experience is indicative of a new path toward harmonization, if not uniformity of legal norms in different national legal systems.[28] Thus, we may well be seeing the beginning of a new era of international norms and standards in the field of criminal procedure, irrespective of whether it is before international, inter-national institutions, or national judicial institutions.

The editors as well as the authors are to be congratulated for this focused, analytical and detailed study of the rights of defense in what we can call international proceedings and proceedings with an international dimension. While the editors and the authors seem to have targeted the book for students of international criminal law and human rights, it is also a valuable textbook for experts, and it is surely a useful guide for anyone practicing or wanting to practice before international institutions. There is no doubt that this is a valuable contribution to the literature on international criminal law, human rights, and comparative criminal procedure. The editors and the authors are also to be congratulated for their thoroughness and precise detail on what would otherwise appear to be a narrow question in the midst of the larger questions relating to the establishment of international judicial institutions. In the end, the goals of justice can only be attained through fairness and impartiality—and for that, a vigorous and effective right to counsel, with all that which the concept implies, is necessary. If international criminal justice is to become that, as opposed to merely another means by which to achieve political outcomes, then we surely must strive to have institutions of international justice meet the highest standards of due process of law. The rights of defense are foundational to any system of justice, even though they may at times be costly, lengthy, and even be abused. The quality of justice we must offer internationally and nationally is about the values this civilization wants to uphold, not about militarism. If that were the case, we could simply return to trial by battle, where the outcomes are

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[27] It should be noted, however, that neither Guantanamo nor the Iraq Tribunal are mixed models of international/national justice. Admittedly, the Iraq tribunal statute was promulgated by the Coalition Provisional Authority and drafted mainly by American advisors. *See* M. Cherif Bassiouni, *Post-Conflict Justice in Iraq: An Appraisal of the "Iraq Special Tribunal,"* 38 CORNELL INT'L L.J. 327 (2005). On October 19, 2005, Iraqi Law No. 10 abrogated CPA Order No. 48 of 10 December 2003. This law contains significant elements of the American procedural system, but it was still enacted by national legislation. The Tribunal has only Iraqi judges and prosecutors.

[28] This includes European supra-national criminal law and procedure as well as European institutions such as Europol and Eurojust, and framework laws giving effect on a European Union wide basis to national arrest warrants.

prompt, and for some, even entertaining. Fair and impartial justice makes trials something more than a Greek tragedy where a *deus ex machina* emerges somewhere to resolve the tragedy. This is why we need an effective right to counsel as part of an overall due process approach that balances the different rights in question and which accomplishes the several goals of justice, including recordation and prevention.

M. Cherif Bassiouni
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PREFACE

Justice has nothing to do with expediency.

President Woodrow Wilson, February 26, 1916

Equality before the law in a true democracy is a matter of right. It cannot be a matter of charity or of favor or of grace or of discretion.

U.S. Supreme Court Justice Wiley Rutledge, Speech to the American Bar Association, September 29, 1941

This book is the fruit of the desire to produce a collection of materials and commentaries on the law and practice of the defense before international and internationalized tribunals and courts.[1] The area of international criminal law and procedure is a fast moving discipline, and very often events overtake any scholarly attempt to provide a systematic overview of matters. Thus, the editors and contributors are aware that by the time this book is published, many things will have happened that will render parts of it obsolete. Nevertheless, we considered it useful at least to make a start by putting together a foundation on which one can build and which tries to focus the developments up to a certain point in time, to describe the *status quo*, as it were, from which future events will lead onward. We attempted to state the law and practice as of May 2005, but due to the unavoidable and ubiquitous delays in the writing, editing and publishing process, that attempt may not always have been successful.[2]

The editors would like to thank the contributors[3] for their preparedness to sacrifice their precious time, which they had to take out from their otherwise very busy professions and practices, and for enduring the endless cajoling, admonitions and outright harassment about corrections and the timely delivery of the manuscripts. We are most grateful for the insights they provided, both on the scholarly and practical level.

Our heartfelt thanks must go to Professor M. Cherif Bassiouni, for writing the Foreword, and to him and Heike Fenton of Transnational Publishers, for accepting the book in the prestigious International and Comparative Criminal Law Series.

Michael Bohlander
Roman Boed
Richard J. Wilson
Durham, The Hague and Washington, D.C., June 2005

[1] We have also included two systems that are strictly speaking national courts (Guantánamo and Iraq), but they deal with the same sort of crimes addressed in the international(ized) courts and have an international background to their creation.

[2] Before the book went to press, the Statute of the Iraqi Tribunal was radically amended; the new version and the Rules of Procedure and Evidence can be found in the Official Gazette Al-Waqa'I Al-Iraqiya No 4006, Ramadan 14, 1426 Hijri, 47th year, October 18, 2005.

[3] Disclaimer: All contributions in this book represent only the personal views of the authors and editors. They are not meant to be representative of the views of the institutions, chambers or firms in which they work.

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Michael Bohlander is a professor of law at Durham University (U.K.). He was a member of the German Judiciary from 1991–2004 and the senior legal officer of a trial chamber at the ICTY from 1999–2001. He is the founding editor-in-chief of the *International Criminal Law Review* and has published on a wide range of topics.

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Richard J. Wilson is Professor of Law and founding director of the International Human Rights Law Clinic at the Washington College of Law, American University, in Washington, D.C. He is a member of Board of Directors of the law school's Center for Human Rights and Humanitarian Law. Since 1990, his clinic regularly litigates cases raising questions of transnational and international criminal law and procedure. Professor Wilson teaches in the Oxford University summer International Human Rights Law program, and has been a visiting professor at law schools in Japan and Peru. He has served as a legal advisor on prisoner's rights issues for the Consulate of Colombia in Washington, and was a Fulbright Scholar in Colombia in 1987. He has written or edited eight books or monographs on international and domestic law, and has authored over 60 articles, chapters and reviews on a range of issues, with particular emphasis on international criminal defense and the death penalty. He was a member of the American Bar Association's Criminal Justice Section Council, and served as Reporter on the last revision to the Association's national Standards for Defense Services in 1992. He was a member of the Board of Editors of the *American Journal of Comparative Law* and now serves as a member of the Board of Editors of the *International Criminal Law Review*. He began his legal career as a criminal defense attorney in Illinois, where he practiced for eight years.

Wolfgang Bendler studied law and sociology in Munich and practiced as a young lawyer in Paris. Since 1974 he has practiced as defense counsel in numerous criminal cases, including proceedings on extradition and political prosecution by means of penal law as in human rights work. He has authored various publications on the development of the European and international cooperation of police, prosecution and justice. He is a member of the advisory board of the academic journal *STRAFVERTEIDIGER*, and was head of a working group for creating an institutionalised network of European defense counsel (EU-DEFENSE). He is a former president of the "Initiative Bayerischer Strafverteidigerinnen und Strafverteidiger e. V. München," a member of "International Criminal Law Net (ICLN)," an individual member of the "International Criminal Bar (ICB)," and has been listed as defense counsel at the International Criminal Court.

Sylvia de Bertodano is a U.K. barrister specializing in national and international criminal law. She was defense counsel in *Prosecutor v. Tadic*, the first trial before the ICTY, and has defended cases at the ICTR and the Special Panels for Serious Crimes in East Timor. She is a legal expert for the East Timor delegation at the PrepComs and Assembly of States Parties for the ICC and has advised the East Timor government on issues concerning accession to and implementing legislation for the Rome Statute. Likewise, she advised the Special Court for Sierra Leone on defense issues. She is a member of a panel of experts for the International Bar Association, drafting a Code of Conduct for Defense Counsel before the ICC and a member of a panel of experts on defense issues for the ICC. She also serves on the Editorial Committee of the *Journal of International Criminal Justice*.

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