



Gerhard Werle

Principles of International Criminal Law

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by

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Preface

International criminal law has made immense strides in the recent past, from the creation of the Yugoslavia Tribunal in 1993 to the establishment of the International Criminal Court, which took up operations in 2003. While as recently as the early 1990s, the very existence of international criminal law was often called into question, the baseline today is clear: International criminal law is an integral part of international law, not simply law in the making. International criminal law is applied by international courts, states are called upon to assist in its implementation, and domestic incorporation processes are underway in many countries. The consequences for the study of international criminal law are obvious: Today, what is needed is not a merely historical presentation of the evolution of the subject, but an ordering and analysis of this body of law. In that spirit, this book undertakes a systematic survey of the foundations and general principles of substantive international criminal law and of the core crimes – that is, genocide, crimes against humanity, war crimes, and the crime of aggression.

The subject of this volume is the norms that form the basis for individual criminal responsibility under international law. The discussion includes both the Statute of the International Criminal Court and customary international criminal law. It is true that the Statute essentially embodies customary law, but it does not exhaust it; customary international criminal law goes beyond the Statute, especially in the criminalization of violations of international humanitarian law. The jurisprudence of international tribunals is included throughout the text as an authoritative source, particularly the case law of the Yugoslavia and Rwanda Tribunals, which has already contributed significantly to the development of international criminal law.

This volume is addressed to law students, academics and practitioners concerned with international criminal law, international humanitarian and human rights law, or application of international criminal law in a domestic context. The present edition is based on my book “Völkerstrafrecht,” which was published in Germany in 2003 (publishers Mohr Siebeck, Tübingen). The text has been thoroughly updated and revised to meet the needs of an international, English-speaking audience; references to Germany and German-language sources have been retained where they are relevant to the international context. Scholarship and jurisprudence have been included through August 2004; later decisions and publications were incorporated to the extent permitted by the editing process.

I am grateful to the Berghof Stiftung für Konfliktforschung e.V. which generously funded this project. I would also like to sincerely thank a number of current and former researchers at Humboldt-Universität zu Berlin for their extraordinary dedication. Above all, my thanks go to Dr. Florian Jessberger, not only for his active in-

volvement in the writing of the first two sections (Foundations and General Principles), but also for having contributed significantly to the overall concept of this book. I would also like to acknowledge the important contributions by Dr. Volker Nerlich (War Crimes and Aggression) and Dr. Wulf Burchards (War Crimes Against Persons and Use of Prohibited Methods of Warfare). Dr. Burchards was also in charge of revising the third and fourth sections (Genocide and Crimes Against Humanity); Dr. Stephan Meseke and Dr. Barbara Lüders made valuable contributions to the German versions of these chapters. Belinda Cooper's translation of the German text provided an important basis for this edition. She served as a competent and critical interlocutor in resolving numerous issues that arose in the course of the revisions, many of which went beyond linguistic details. My thanks extend also to Professor Horst Fischer for fruitful discussions on matters of international humanitarian law.

Gregoria Palomo Suarez, Ines Peterson, Camill Sander, Boris Burghardt, Stefan Langbein and Anja Schepke provided invaluable support in finding and analyzing cases and literature, as well as dealing with a variety of technical tasks. The appendices were compiled by Ines Peterson and Gregoria Palomo Suarez (Table of Cases, Table of Statutes and International Instruments), Dr. Wulf Burchards and Dr. Volker Nerlich (Index).

Berlin, January 2005

Gerhard Werle

Table of Abbreviations

Additional Protocol I	<i>Protocol Additional to Geneva Conventions of August 12th, 1949, and Relating to the Protection of Victims of International Armed Conflicts</i> , of 8 June 1977, 1125 UNTS (1977), p. 3
Additional Protocol II	<i>Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts</i> of 8 June 1977, 1125 UNTS (1977), p. 609
Bundesgesetzblatt	(German) Federal Law Gazette
BGHSt	Decisions of the (German) Federal Supreme Court in Criminal Matters
BT-Drs.	Official Documents of the German Parliament [<i>Bundestags-Drucksache</i>]
Biotoxin Weapons Convention	<i>Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction</i> of 10 April 1972, 1015 UNTS (1972), p. 163
CCL No. 10	Control Council Law No. 10, Official Gazette of the Control Council for Germany No. 3, 31 January 1945, pp. 50 et seq.
Chemical Weapons Convention	<i>Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction</i> of 13 January 1993, 1975 UNTS (1997), p. 469
<i>Draft Code 1954</i>	Draft Code of Offences against the Peace and Security of Mankind, Report of the International Law Commission covering the work of its sixth session (3 June-28 July 1954), UN Doc. A/2693, in: <i>Yearbook of the International Law Commission 1954</i> II, p. 149
<i>Draft Code 1991</i>	Draft Code of Crimes against the Peace and Security of Mankind, Report of the International Law Commission on the work of its forty-third session (29 April-19 July 1991), UN Doc. A/46/10, in: <i>Yearbook of the International Law Commission 1991</i> II, p. 79
<i>Draft Code 1996</i>	Draft Code of Crimes against the Peace and Security of Mankind, Report of the International Law Commission on the work of its forty-eighth session (6 May-26 July 1996), UN Doc. A/51/10, in: <i>Yearbook of the International Law Commission 1996</i> II, p. 15
Draft ICC Statute (1998)	<i>Draft Statute for the International Criminal Court, Report of the Preparatory Committee on the Establishment of an International Criminal Court</i> of 14 April 1998, UN Doc. A/CONF.183/2/Add.1, p. 14
EU	European Union
ETS	European Treaty Series
fn.	Footnote(s)
GAOR	UN General Assembly Official Records

Geneva Convention I	<i>Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field</i> of 12 August 1949, 75 UNTS (1949), pp. 31 et seq.
Geneva Convention II	<i>Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of in Armed Forces at Sea</i> of 12 August 1949, 75 UNTS (1949), pp. 85 et seq.
Geneva Convention III	<i>Convention relative to the Treatment of Prisoners of War</i> of 12 August 1949, 75 UNTS (1949), pp. 135 et seq.
Geneva Convention IV	<i>Convention relative to the Protection of Civilian Persons in Time of War</i> of 12 August 1949, 75 UNTS (1949), pp. 287 et seq.
Genocide Convention	<i>Convention on the Prevention and Punishment of the Crime of Genocide</i> of 9 December 1948, 78 UNTS (1949), p. 277
Hague Regulations	<i>Annex to Convention (IV) respecting the Laws and Customs of War on Land: Regulation concerning the Laws and Customs of War on Land</i> of 18 October 1907, the text of the treaty can be found at < http://www.icrc.org/ihl >
ICC	International Criminal Court
ICC Statute	<i>Rome Statute of the International Criminal Court</i> of 17 July 1998, 37 ILM (1998), pp. 999 et seq.
ICJ	International Court of Justice
ICJ Rep.	International Court of Justice, Reports of Judgments, Advisory Opinions and Orders
ICRC-Study on Art. 8 ICC Statute	Text prepared by the International Committee of the Red Cross on Article 8 of the Rome Statute, UN Doc. PCNICC/1999/WGEC/INF/2 and Add.1–Add.3
ICTR	International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994
ICTR Statute	<i>Statute for the International Criminal Tribunal for Rwanda</i> , UN Doc. S/RES/955 (1994).
ICTY	International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991
ICTY Statute	<i>Statute for the International Criminal Tribunal for the Former Yugoslavia</i> , UN Doc. S/RES/808 (1993)
ILA	International Law Association
ILC	International Law Commission
ILM	International Legal Materials
ILO	International Labour Organisation
ILR	International Law Reports
IMT	International Military Tribunal Nuremberg
IMT Charter	<i>Charter of the International Military Tribunal, Nuremberg</i> , in: 39 <i>American Journal of International Law</i> (1945), Suppl. pp. 257 et seq.

LNTS	League of Nations Treaty Series
NATO	North Atlantic Treaty Organisation
Nuremberg Charter	<i>Charter of the International Military Tribunal, Nuremberg</i> , in: 39 <i>American Journal of International Law</i> (1945), Suppl. pp. 257 et seq.
Nuremberg Principles	Principles of International Law Recognized in the Charter of the Nuremberg Tribunal and in the Judgment of the Tribunal, Report of the International Law Commission covering the work of its second session (5 June-29 July 1950), UN Doc. A/1316, in: <i>Yearbook of the International Law Commission</i> 1950 II, 374.
Nuremberg Tribunal	International Military Tribunal Nuremberg
OGHSt.	Decisions of the Supreme Court in the British Occupied Zone
para.(s.)	paragraph(s)
Poison Gas Protocol	<i>Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare</i> of 17 June 1925, see < http://www.icrc.org/ihl >
Preparatory Commission	Preparatory Commission for the International Criminal Court
Preparatory Committee	Preparatory Committee on the Establishment of an International Criminal Court
Res.	Resolution
Reichsgesetzblatt	Law Gazette for the German Reich
Rwanda Tribunal	International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994
Supp(l).	Supplementum
TIAS	(US) Treaties and other International Acts
Tokyo Charter	<i>Charter of the International Military Tribunal for the Far East</i> , reprinted in: J. Pritchard and S.M. Zaide (eds.), <i>The Tokyo War Crimes Trial</i> (1981), Vol. 1
Tokyo Tribunal	International Military Tribunal for the Far East
UN	United Nations
UN Apartheid Convention	<i>International Convention on the Suppression and Punishment of the Crime of Apartheid</i> of 30 November 1973
UN Definition of Aggression	<i>UN General Assembly Resolution 3314 (XXIX)</i> of 14 December 1974
UN Doc.	Documents of the United Nations
UN GA	United Nations General Assembly
UN SCOR	United Nations Security Council Official Records
UNTAET	United Nations Transitional Administration in East Timor
UNTS	United Nations Treaty Series

UNWCC

United Nations War Crimes Commission

Yugoslavia Tribunal

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

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