

LEIDEN STUDIES ON THE FRONTIERS OF INTERNATIONAL LAW
VOLUME 1

The Diversification and Fragmentation of International Criminal Law



*Edited by Larissa van den Herik
and Carsten Stahn*

MARTINUS NIJHOFF PUBLISHERS

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Larissa van den Herik and Carsten Stahn



MARTINUS

NIJHOFF

PUBLISHERS

LEIDEN • BOSTON
2012

Library of Congress Cataloging-in-Publication Data

The diversification and fragmentation of international criminal law / Edited by Larissa van den Herik and Carsten Stahn.

p. cm. -- (Leiden studies on the frontiers of international law ; 1)

Includes index.

ISBN 978-90-04-21459-0 (hardback : alk. paper) -- ISBN 978-90-04-23691-2 (e-book) 1. International criminal law. I. Herik, L. J. van den (Larissa J.) II. Stahn, Carsten, 1971- KZ7000.D58 2012

345--dc23

2012036643

ISBN 978-90-04-21459-0 (hardback)

ISBN 978-90-04-23691-2 (e-book)

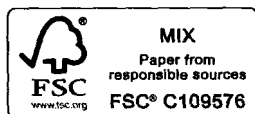
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This book is printed on acid-free paper.



Printed by Printforce, the Netherlands

Abbreviations

A.Ch.	Appeals Chamber
ABS	Argentina, Brazil, Switzerland
AC	Appeal Cases
ACHPR	African Charter on Human and Peoples' Rights
AComHPR	African Commission on Human and Peoples' Rights
ACHR	American Convention on Human Rights
ADR	Alternative Dispute Resolution
AFRC	Armed Forces Revolutionary Council
AFSJ	Area of Freedom, Security and Justice
AJIL	American Journal of International Law
AJM	Alternative Justice Mechanism
All ER	All England Reports
ASIL	American Society of International Law
ASIL Bull.	American Society of International Law Bulletin
ASP	Assembly of States Parties to the Rome Statute
ASR	Articles on Responsibility of States for Internationally Wrongful Acts
AU	African Union
BGBI.	Bundesgesetzblatt (Federal Law Gazette, Germany)
BGH	Bundesgerichtshof (Federal Court of Justice of Germany)
BGHSt	Entscheidungen des Bundesgerichtshofs in Strafsachen (Official collection of the Federal Court of Justice of Germany for decisions in criminal law)
BiH	Bosnia and Herzegovina
BVerfG	Bundesverfassungsgericht (Federal Constitutional Court of Germany)
CAR	Central African Republic
CAT	UN Convention against Torture and other Cruel, Inhuman and Degrading Treatment
CCPR	Covenant on Civil and Political Rights
CDF	Civil Defense Forces (Sierra Leone)

CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CIL	Customary International Law
CONADEP	Comisión Nacional sobre la Desaparición de Personas (National Commission on the Disappearance of Persons)
CRTR	Commission for Reception, Truth and Reconciliation in East Timor
CT	Treaty Establishing a Constitution for Europe (Constitutional Treaty)
DIRCOTE	Counter-Terrorist Directorate of the National Police of Peru
DPKO	Department of Peacekeeping Operations (UN)
DPRK	Democratic People's Republic of Korea
DRC	Democratic Republic of the Congo
EAW	European Arrest Warrant
EC	European Community
ECCC	Extraordinary Chambers in the Court of Cambodia
ECCC-OCIJ	Extraordinary Chambers in the Courts of Cambodia – Office of Co-Investigating Judges
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
ECommHR	European Commission on Human Rights
ECOWAS	Economic Community of West African States
ECR	European Court Reports
ECtHR	European Court of Human Rights
EEW	European Evidence Warrant
EHRR	European Human Rights Reports
EJIL	European Journal of International Law
EPP	European Public Prosecutor
ETS	European Treaty Series
EU	European Union
Europol	European Police Office
EWHC	High Court of England and Wales
FICJC	Forum for International Criminal Justice and Conflict
FNI	Front des Nationalistes et Intégrationnistes (Nationalist Integrationist Front)
FPLC	Forces Patriotiques pour la Libération du Congo
FRPI	Force de Résistance Patriotique en Ituri (Patriotic Resistance Force in Ituri)
FRY	Federal Republic of Yugoslavia
GAOR	General Assembly Official Records
GC	Geneva Conventions
HCA	High Court of Australia
HL	House of Lords
HRC	Human Rights Committee

IACHR	Inter-American Commission of Human Rights
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Court of Justice
ICJ Rep.	International Court of Justice Reports
ICL	International Criminal Law
ICLQ	International & Comparative Law Quarterly
ICPO-INTERPOL	International Criminal Police Organization
ICRC	International Committee of the Red Cross
ICTJ	International Center for Transitional Justice
ICTR	International Criminal Tribunal for Rwanda
ICTs	International Criminal Tribunals
ICTY	International Criminal Tribunal for the former Yugoslavia
IHL	International Humanitarian Law
IHRL	International Human Rights Law
IJTJ	International Journal of Transitional Justice
ILC	International Law Commission
ILDC	International Law in Domestic Courts
ILM	International Legal Materials
ILR	International Law Reports
ILSA	International Law Students Association
IMT	International Military Tribunal
IMTFE	International Military Tribunal for the Far East
Inter-Am Ct. H.R.	Inter-American Court of Human Rights
INTERIGHTS	International Centre for the Legal Protection of Human Rights
ISISC	International Institute of Higher Studies in Criminal Sciences
JCE	Joint Criminal Enterprise
JHA	Justice and Home Affairs 'Pillar'
JICJ	Journal of International Criminal Justice
JSD	Doctor of Science of Law
LJIL	Leiden Journal of International Law
LJN	Landelijk Jurisprudentie Nummer
LRA	Lord's Resistance Army
Mercosur	Southern Common Market
MLC	Mouvement de libération du Congo (Movement for the Liberation of Congo)
MPs	Members of Parliament
NAFTA	North American Free Trade Agreement
NATO	North Atlantic Treaty Organization
NGO	Non-Governmental Organization
NL	The Netherlands
NMT	Nuremberg Military Tribunal

NStZ	Neue Zeitschrift für Strafrecht
NYU	New York University
OAU	Organization of African Unity
OJ	Official Journal
OLG	Oberlandesgericht (Provincial Court of Appeal)
OTP	Office of the Prosecutor
PCA	Permanent Court of Arbitration
PCIJ	Permanent Court of International Justice
PGA	Parliamentarians for Global Action
PrepCom	Preparatory Committee on the Establishment of an International Criminal Court
PRIDE	Post-conflict Reintegration Initiative for Development and Empowerment
PRIO	Peace Research Institute Oslo
PTC	Pre-Trial Chamber
RBDI	Revue Belge de Droit International
RG	Pardons Reference Group, South Africa
RHDI	Revue Hellenique Droit International
RIAA	Reports of International Arbitral Awards
RPE	Rules of Procedure and Evidence
RS	Rome Statute
RUF/SL	Revolutionary United Front of Sierra Leone
S. Ct.	Supreme Court Reporter (United States of America)
SADC	Southern African Development Community
SCSL	Special Court for Sierra Leone
SCU	Serious Crimes Unit (UNTAET)
SLA	Sierra Leone Army
STL	Special Tribunal for Lebanon
SWGCA	Special Working Group on the Crime of Aggression
T.Ch.	Trial Chamber
TEC	Treaty establishing the European Community
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
TFV	Trust Fund for Victims (ICC)
TJ	Transnational Justice
TRC	Truth and Reconciliation Commission
U.S.C.	United States Code
UAE	United Arab Emirates
UCLA	University of California, Los Angeles
UK	United Kingdom
UKHL	United Kingdom House of Lords
UN	United Nations
UN Doc.	UN Documents

UNESCO	United Nations Educational, Scientific and Cultural Organization
UNGA	United Nations General Assembly
UNHCR	United Nations High Commissioner for Refugees
UNRIAA	United Nations Reports of International Arbitral Awards
UNSC	United Nations Security Council
UNSG	United Nations Secretary-General
UNSW	University of New South Wales
UNTAET	United Nations Transitional Administration in East Timor
UNTS	United Nations Treaty Series
UNWCC	United Nations War Crimes Commission
UNYB	Yearbook of the United Nations
UPC	Union des Patriotes Congolais
UPC/RP	Union des Patriotes Congolais/Réconciliation
USA	United States of America
Vand. L. Rev.	Vanderbilt Law Review
VCLT	Vienna Convention on the Law of Treaties
VPRS	Victims Participation and Reparation Section (ICC)
VRS	Army of the Republika Srpska
VStGB	Völkerstrafgesetzbuch (German International Criminal Code)
WGCA	Working Group on the Crime of Aggression
WTO	World Trade Organization
YILC	Yearbook of the International Law Commission
ZASCA	Supreme Court of Appeal of South Africa

Preface and Acknowledgments

This volume is the first in a new series of Studies on the *Frontiers of International Law*. The term 'frontier' is traditionally associated with proximity to a boundary or a demarcation line. But it is also a connecting point, *i.e.*, a passage or channel between spaces that are usually considered as separate entities. Sometimes, the dividing line between these spaces is fluid. Sometimes it is more deeply entrenched, distinct or tangible. The purpose of this new Series is to explore the visible and imaginary boundaries of scholarship in International Law. It is designed to test the existing table of contents, vocabulary and limits of 'Public International Law', to investigate lines and linkages between 'centre' and 'periphery', and to re-map or re-think some of its conceptual boundaries.

This first volume is written in this spirit. It deals with the tension between unity and diversification which has gained a central place in the debate under the label of 'fragmentation'. This volume explores the meaning, articulation and risks of this phenomenon in a specific area: International Criminal Justice. It brings together established and fresh voices who analyse different sites and contestations of this concept, as well as its context and specific manifestations in the interpretation and application of International Criminal Law. The volume thereby connects discourse on 'fragmentation' with broader inquiry on the merits and discontents of legal pluralism in 'Public International Law'.

This book is the result of a research project carried out by the Grotius Centre for International Legal Studies under the umbrella of the Marie Curie Actions Programme. Many persons have contributed to the publication of this work. We are indebted to Christine Tremblay for her outstanding coordination of the Marie Curie project generally. We are equally grateful for the excellent editorial assistance that we have received from Neil Fishman, Anton Fischer and Teodora Jugrin. We also wish to thank Lindy Melman of Martinus Nijhoff and her team for her support in the publication process. Finally we are thankful to all our contributors, who have given 'gravity' to this volume with their individual chapters.

The painting featured on the cover of this volume reflects the direction of this new Series. It is a 2011 work (oil on paper) by the New York-based artist Alexis Portilla who kindly allowed us to use the image. It is entitled 'God Particle'. This particle (also known as the 'Higgs boson') is central to elementary physics. Evi-

dence of its discovery was announced by CERN in Switzerland in July 2012. The particle gives 'mass' to all matter. In this sense, it captures the tension between unity and diversity by holding the fragments together. It also reflects the idea of reaching new 'frontiers' in science.

We hope that this volume will contribute to the start of a unique and innovative Series of Studies in International Law.

Larissa van den Herik
Carsten Stahn

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