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# TOWARDS AN INTERNATIONAL CRIMINAL PROCEDURE

Christoph J. M. Safferling

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# *Towards an International Criminal Procedure*

CHRISTOPH J. M. SAFFERLING

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## Preface

*Towards an International Criminal Procedure* was first published in April 2001. International criminal law has continued to change in the intervening time. The Rome Statute for the International Criminal Court (ICC), signed in July 1998, has provoked an immense amount of academic work. The Statute came into force on 1 July 2002, Rules of Procedure and Evidence have been drafted, and a list of persons to be elected as judges and prosecutor has been assembled. The ICC has set sail.

International criminal law has also developed through the work of the UN Tribunals for the Former Yugoslavia and for Rwanda: several decisions of their chambers have influenced procedural law. The multitude of amendments to the Rules of Procedure and Evidence at the UN Tribunals illustrate the insecurity of the judges, coming from a great variety of legal cultures to The Hague and Arusha, with regard to procedural issues.

The goal of an international criminal procedure has not yet been reached. The maxim 'towards an international criminal procedure' understood as a working programme of a law in progress is therefore still valid. The Statute and Rules of the ICC provide a framework within which the rights of the accused and of victims must be balanced. The ICC has been given a procedural order that combines Continental and Anglo-American criminal procedure, and that procedural order is still incomplete, and sometimes inconsistent.

*Towards an International Criminal Procedure* aims to put international criminal procedure into the context of comparative law and human rights law. It attempts to promote understanding of differing traditions on the one hand and adherence to universal principles on the other. Using these two pillars, this volume seeks to establish a solid and commonly acceptable foundation from which answers to special procedural questions may be derived.

Furthermore, in addressing the entire process of criminal prosecution from beginning to the end, it indicates the necessity to view criminal procedure in its entirety, in order to develop the 'whole system'. This volume is not, however, a commentary to the Rome Statute or other documents. The reader will not find a discussion of every article of the ICC Statute or of the Rules of Procedure and Evidence (which were, at the time of writing, only available as a first and incomplete draft). There are other publications which fulfil that purpose. Instead, this volume guides the reader through the individual steps of criminal prosecution. It explains their underlying rationale, how they are carried out in general in national jurisdictions (using Germany, the UK, and the USA

to represent the differing legal systems), and illustrates how they can be dealt with before international institutions.

I am very grateful to Oxford University Press for producing this paperback edition, which makes the book affordable to a wider readership. Hopefully it will serve its purpose for practitioners as well as students and academics as a worthwhile compendium of comparative and international criminal procedural law.

C.J.M.S.

Erlangen, December 2002

## Acknowledgements

The idea of the thesis on which this book is based was born in 1996 during a seminar at the Ludwig-Maximilians-Universität in Munich on the development of international criminal law ('Von Nürnberg bis Den Haag') held by Professor Dr Bruno Simma. I had the pleasure of looking at the procedural order at the International Criminal Tribunal for the Former Yugoslavia. This task was handed over to me mainly because I had at that stage no history in public international law but was believed to be familiar with German national criminal law. In the course of the work for a paper presented at this seminar, which was drafted with the kind help of Markus Zöckler, I realized that not much literature on the Anglo-American criminal process was available in Munich and that a thorough analysis and comparison between what I knew of German criminal procedure and 'the other' system was not available. This seemed to me to be the main snag in the discussion of an international criminal procedural order, that there is a major misconception of 'the other' system on both sides of the water. We just do not know enough about one another. With the aim of forming a criminal order for an International Criminal Court I thought it would be worth looking at both systems and comparing them in greater detail. The *tertium comparationis* in international law could only be human rights law, which serves as a basis for all executive actions.

I am greatly indebted to Professor Dr Bruno Simma who encouraged me to make this the topic of a doctoral thesis under his supervision and gave me all the support that I needed. Many thanks to Professor Dr Klaus Volk, who functioned as a second supervisor. I am grateful to the Law Faculty of the University of Munich that not only gave me permission to submit this thesis in English, the first doctoral thesis there ever to be written in English, but also awarded the faculty prize of 2000 to this book. I would like to thank Oxford University Press and Mr John Louth for accepting the manuscript despite many procedural difficulties at the beginning.

Most of my knowledge of public international law and human rights law in particular I gained from my stay at the London School of Economics and Political Science, where I took part in the postgraduate master of law course in the academic year 1996/7. To do further research I stayed at the University of London for another six months, during which time most of this thesis was written. I am grateful for everything I learnt there and for having had the opportunity to use the wonderful British Library of Political and Economic Science. Many thanks also to the British

Institute of Advanced Legal Studies and its library. The Registry at the International Criminal Tribunal for the Former Yugoslavia made it very easy for me to access the important cases and material, not only via the internet but also by sending out copies. I got invaluable support from Professor Christopher Greenwood (LSE) for whom I had the pleasure to work as an occasional research assistant and who supplied me with much material and ideas. I am also thankful in particular for help in understanding human rights from Professor Christine Chinkin and Dr Chaloka Beyani (both LSE), who also both discussed problems with me to clear my mind. As English is not my mother tongue, I was dependent on native speakers to help with grammar and orthography. Without the help of Mrs Mary-Louise Eisenberger, MA, Sarah Green, M.Sc. (LSE), Farrhat Arshad, BA (Oxon.), LL.M. (LSE), Caroline Neenan, BA (Oxon.), Annecoos Wiersema, LL.B. (LSE), and Daniel Taegtmeyer, this thesis would probably be linguistically unintelligible. I am very thankful for their advice, support, and friendship. Most important as concerns moral support, apart from Newman House and Father Jim Overton and Father Jeremy Fairhead, were Fiona Muklow, Dr Ludger Helms, Paul Rosario, Günther Treppner, Tamara Repolust, and Billy Swan. Many thanks also to Professor Dr Christian Wolf (Munich) for his time and precious advice. I would also like to thank my fiancée Natascha Etminan for her endurance and love. Last but not least I am deeply indebted to my parents who made all my education possible and never let me doubt their support, not only financially, in a way that no one could expect. As my mother died only a few weeks ago, I would like to dedicate this publication to her in particular.

C.J.M.S

*Munich*  
*October 2000*

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