

International and Comparative Criminal Justice

The background of the cover features a dark, textured globe. Overlaid on the globe is a large, intricate fingerprint pattern in a lighter shade, creating a visual metaphor for global crime and justice.

# **The International Criminal Court and National Courts**

## **A Contentious Relationship**

**Nidal Nabil Jurdi**

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Published by  
Ashgate Publishing Limited  
Wey Court East  
Union Road  
Farnham  
Surrey, GU9 7PT  
England

Ashgate Publishing Company  
Suite 420  
101 Cherry Street  
Burlington  
VT 05401-4405  
USA

[www.ashgate.com](http://www.ashgate.com)

#### **British Library Cataloguing in Publication Data**

Jurdi, Nidal Nabil.

The International Criminal Court and national jurisdictions : a contentious relationship.

-- (International and comparative criminal justice)

1. International Criminal Court. 2. Criminal jurisdiction. 3. Criminal procedure (International law) 4. International and municipal law. 5. War crime trials. 6. War crimes--Uganda. 7. War crimes--Sudan--Darfur.

I. Title II. Series

345'.01-dc22

#### **Library of Congress Cataloging-in-Publication Data**

Jurdi, Nidal Nabil.

The International Criminal Court and national jurisdictions : a contentious relationship / by Nidal Nabil Jurdi.

p. cm. -- (International and comparative criminal justice)

Includes bibliographical references and index.

ISBN 978-1-4094-0916-8 (hardback) -- ISBN 978-1-4094-0917-5 (ebook) 1. International Criminal Court. 2. Jurisdiction (International law) 3. Criminal liability (International law) 4. Criminal procedure (International law) 5. International criminal courts. 6. International offenses. 7. Criminal justice, Administration of--International cooperation. I. Title.

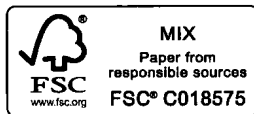
KZ6314.J87 2010

345'.01--dc22

2010035142

9781409409168 (hbk)

9781409409175 (ebk)



Printed and bound in Great Britain by the  
MPG Books Group, UK

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- Convention for the Protection of Human Rights and Fundamental Freedoms. Council of Europe, Rome. 1950. Entry into force on 3 September 1953. Cets No.: 005.
- Convention for the Suppression of Unlawful Acts against Safety of Civil Aviation. 23 September 1971. 974 U.N.T.S. 177, 10 I.L.M. 1151(1971).
- Convention for the Creation of an International Criminal Court. 1936. League of Nations. Supp. No. 156(1936), LN Doc. C. 547(I). M.384(I). 1937. V(1937).
- Convention on the Prevention and Punishment of the Crime Genocide, 1948.
- Convention With Respect to the Laws and Customs of War on Land. 29 July 1899. Hague, II.
- Convention for The Amelioration of The Condition of The Wounded And Sick In The Armed Forces. 12 August 1949. 75 U.N.T.S. 31,62.
- Convention for The Amelioration of The Condition of The Wounded, Sick, And Shipwrecked Members of The Armed Forces At Sea. 12 August 1949, 75 U.N.T.S. 85.
- Convention Relative to the Treatment of the Prisoners of War, 12 August 1949, 75 U.N.T.S. 135, 236.
- Convention Relative to the Protection of Civilian Persons in Time of War. 12 August 1949. 75 U.N.T.S. 287, 386.
- Convention for the Suppression of Unlawful Seizure of Aircraft (1971). 16 December 1970.
- Convention on the Prevention and Punishment of Crimes against Protected Persons Including Diplomatic Agents. 14 December 1973. General Assembly Resolution 3166 (XXVIII).
- International Atomic Energy Agency Convention on the Physical Protection of Nuclear Material. 1980. IAEA.
- International Convention against Taking Hostages. 17 December 1979. General Assembly Resolution 34/1146.

International Maritime Organization Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation. 10 March 1988. Doc SUA/con/15, 27 ILM. 672/1988.

Maastricht Treaty.

Montreal Convention on Unlawful Acts Against safety of Civil Aviation of 1971. Protocol I Additional To The Geneva Conventions of 12 August 1949, and Relating To Protection of Victims of Armed Conflict. 10 June 1977.

Protocol II Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II). 1977.

Rules of Procedure And Evidence, Adopted on 29 June 1995. The 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 1994 and 31 December 1994. Available at: [www.un.org/ict/rules.html](http://www.un.org/ict/rules.html).

Rules of Procedure and Evidence adopted on 11 February 1994, and then amended on 12 July 2007. 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, IT/32/Rev. 40. Available at: [www.un.org/icty/legaldoc-e/basic/rpe/IT032Rev40e.pdf](http://www.un.org/icty/legaldoc-e/basic/rpe/IT032Rev40e.pdf).

Statute of the International Criminal Tribunal for the Former Yugoslavia, adopted on 25 May 1993 by Resolution 827, and then amended by subsequent Resolutions. November 2007. 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. Available at: [www.un.org/icty/legaldoc-e/index.htm](http://www.un.org/icty/legaldoc-e/index.htm).

Statute of the 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 1994 and 31 December 1994, Adopted by Security Council Resolution 955, and then Amended by Security Council Resolutions. 8 November 2004. Available at: [www.un.org/ict/statute.html](http://www.un.org/ict/statute.html).

Statute of the Special Court For Sierra Leone. 16 January 2002. Annexed to Agreement between The United Nations And The Government of Sierra Leone on The Establishment of a Special Court For Sierra Leone. Available at: [www.sc-sl.org/scsl-statute.html](http://www.sc-sl.org/scsl-statute.html).

The African (Banjul) Charter on Human and Peoples' Rights (1981) OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58. 1982.

- The American Convention on Human Rights. 1969. Adopted at the Inter-American Specialized Conference on Human Rights, San José, Costa Rica, 22 November 1969.
- The Charter of the United Nations.
- The Code of Criminal Procedure, Republic of Germany.
- The Convention for the Right of the Child.
- The Counterfeiting Convention, 1929.
- The European Convention on Extradition, 1957.
- The International Convention on the Suppression and Punishment of the Crime of Apartheid (1973). Adopted and opened for signature, ratification by General Assembly Resolution 3068 (XXVIII) of 30 November 1973. Entry into force 18 July 1976.
- The International Covenant on Civil and Political Rights (1966), General Assembly Resolution 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, UN Doc. A/6316 (1966), 999. U.N.T.S. 171.
- The International Law Commission Draft Statute in Report of the ILC on the Work of its Forty Sixth Session (1994) UN GAOR.
- The Military Criminal Code, the Democratic Republic of Congo.
- The Penal Code Act, Republic of Uganda. 1970.
- The Rome Statute of the International Criminal Court, UN Doc. A/CONF.183/9. 1998. Entry into force July 2002.
- The Rules of Procedure and Evidence of the International Criminal Court, ICC-ASP/1/3.
- The Sierra Leone Peace Accord signed at Lomé in July 1999.
- The Sudanese Code of Criminal Procedure.
- Vienna Convention on the Law of Treaties, 1969. 23 May 1969. Entered into force on 27 January 1980. United Nations, *Treaty Series*, 1155, 331.

### **Other International Instruments, Declarations, Resolutions and Communications**

- Basic Principles on the Independence of the Judiciary Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders. 26 August – 6 September 1985. Milan. Endorsed by General Assembly Resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.
- Council of Europe. October 1994. Council of Europe Recommendation No. R (94) 12 On the Independence, Efficiency and Role of Judges, adopted by the Committee of Ministers on 13 October 1994 at the 518th meeting of the Ministers' Deputies. Available at: [www.abanet.org/ceeli/areas/judicial\\_reform/coe\\_rec.pdf](http://www.abanet.org/ceeli/areas/judicial_reform/coe_rec.pdf).

- Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. Adopted by the General Assembly in the 96th plenary meeting on 29 November 1985. A/RES/40/34.
- Draft Code of Crimes against the Peace and Security of Mankind, International Law Commission Report. 1996.
- Guiding Principles on Internal Displacement. Available at: [www.unhcr.ch/html/menu2/7/b/principles.htm](http://www.unhcr.ch/html/menu2/7/b/principles.htm).
- Negotiated Relationship Agreement between the ICC and the UN. 4 October 2004. Available at [www.icc-cpi.int/library/asp/ICC-ASP-3-Res1English.pdf](http://www.icc-cpi.int/library/asp/ICC-ASP-3-Res1English.pdf).
- Principles of International Cooperation in the Detection, Arrest, Extradition and Punishment of persons Guilty of War Crimes and Crimes Against Humanity, adopted by The General Assembly. 3 December 1973.
- Security Council Resolution 713(1991). UN Doc. S/Res/731. 1991.
- Security Council Resolution 827. May 1993. UN Doc. S/Res/827. 1993.
- Security Council Resolution 955. 8 November 1994. UN Doc. S/RES/955. 1994.
- Security Council Resolution 1422. 2002. UN Doc. S/Res1422. 2002.
- Security Council Resolution 1487. 2003. UN Doc. S/Res1487. 2003.
- Security Council Resolution 1497. 2004. UN Doc. S/Res1497. 2004.
- Security Council Resolution 1556. 30 July 2004. UN Doc. S/RES/1556.
- Security Council Resolution 1564. 18 September 2004. S/RES/1564. 2004.
- Security Council Resolution 1574. 19 November 2004. S/RES/1574. 2004.
- Security Council Resolution 1590. 24 March 2005. UN Doc. S/RES/1590. 2005.
- Security Council Resolution 1591. 29 March 2005. UN Doc. S/RES/1591. 2005.
- Security Council Resolution 1593. 31 March 2005. UN Doc. S/RES/1593. 2005.
- Security Council Resolution 1769. 31 July 2007. UN Doc. S/RES/1769. 2007.
- The United Nations Handbook on Justice for Victims. 1999. New York. Available at: [www.uncjin.org/Standards/9857854.pdf](http://www.uncjin.org/Standards/9857854.pdf).
- Human Rights Committee. 18 August 1998. Concluding Observations of the Human Rights Committee: Ecuador. CCPR/C/79/Add.92.
- United Nations Committee against Torture. 17 November 1998. Conclusions and Recommendations Concerning the Second Periodic Report of Croatia, UN Doc. A/54/44.
- United Nations Committee against Torture. November 1999. Conclusions and Recommendations of the Committee against Torture Concerning the Third Periodic Report of Peru, UN Doc. A/55/44.
- United Nations Committee against Torture. 17 November 1999. Conclusions and Recommendations of the Committee against Torture concerning the Initial Report of Azerbaijan, UN Doc. A/55/44.
- United Nations Committee against Torture. 18 November 1999. Conclusions and Recommendations of the Committee against Torture Concerning the Initial Report of Kyrgyzstan, UN Doc. A/55/44.
- United Nations General Assembly GA 3074 (xxviii). 3 December 1973. Principles of International Cooperation in the Detection, Arrest, Extradition and Punishment of persons Guilty of War Crimes and Crimes against Humanity.

- United Nations General Assembly Resolution 50/46. 11 December 1995. A/RES/50/46. Available at: [www.un.org/documents/ga/res/50/a50r046.htm](http://www.un.org/documents/ga/res/50/a50r046.htm).
- United Nations Human Rights Committee. 7 April 1992. General Comment No. 20, UN Doc. No. CCPR/C/21/Rev.1./Add.3.
- United Nations Human Rights Committee. 5 May 1993. Comments of the Human Rights Committee, Uruguay, Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant, UN Doc. CCPR/C/79/Add.19.
- United Nations Human Rights Committee. 1995. Comments on Argentina, UN Doc. CCPR/C/79/Add.46.1995.
- United Nations Human Rights Committee. 1997. Concluding Observations of the Human Rights Committee – Lebanon, UN Doc. CCPR/C/79/Add.78, 1 April 1997.
- United Nations Human Rights Committee. 1999. Concluding Observations of the Human Rights Committee – Chile, UN Doc. CCPR/C/79/Add.104 (1999).

# Table of Cases

- Abugkoji v. Attorney General*. 1999. Uganda Human Rights Commission, UHRC, Gulu, Complaint No. G/326/1999.
- Appellee v. William L. Calley, Jr.*, First Lieutenant, U.S. Army, Appellant. 21 December 1973. United States Court of Military Appeals, No. 26,875.
- Arrêt of the Cour de Cassation*, No. 1414. 13 March 2001. *Cour de Cassation, France*.
- Assenov v. Bulgaria*. 28 October 1998. European Court for Human Rights, ECHR App. No. 24760/94.
- Attorney General of Israel v. Eichmann*. 1961. District Court of Jerusalem, 36 ILR 18, 50.
- Bagole v. Attorney General*. 2001. Uganda Human Rights Commission, UHRC, Kampala, Complaint No. 519 of 2001.
- Buzzacott v. Hill*, Minister for the Environment and others. 1999. The Federal Court of Australia, FCA 639.
- Caso Villagran Morales y Otros (Street Children Case)*. 19 November 1999. Inter-American Court of Human Rights.
- De Cubber v. Belgium*. 26 October 1984. European Court for Human Rights, ECHR App. No. 9186/80, ECHR Series A.
- E. Kalanke v. Freie Hansestadt Bremen*. 17 October 1995. European Court of Justice, Case C-450/93 E.C.R. I-3051.
- Ex Parte, Prosecutor Only*. 8 July 2005. Decision on The Prosecutor's Application For Warrants Of Arrest Under Article 58, The International Criminal Court, Pre-Trial Chamber II, No. ICC-O2/O4.
- Fulgence Niyontez v. Public Prosecutor*. 27 April 2001. Tribunal Militaire de Cassation, Switzerland.
- Haas and Priebke cases*. 7 March 1998 and 16 November 1998. Military Court of Appeal of Rome/Supreme Court of Cassation, Italy.
- Hellmut Marshall v. Land Nordrhein-Westfalen*. 11 November 1997. European Court of Justice, Case C-409/95.
- Ignacio Ellacuria et al. v. El Salvador (Jesuit Case)*. 22 December 1999. Inter American Commission of Human Rights. Case 10.488, Report No. 136/99.
- Klaus Barbie Case*. 11 May 1987. The Jewish Virtual Library, Available at: [www.jewishvirtuallibrary.org/jsource/Holocaust/barbietrial.html](http://www.jewishvirtuallibrary.org/jsource/Holocaust/barbietrial.html).
- Langborger v. Sweden*. 22 June 1989. European Court for Human Rights, ECHR App. No. 11179/84, ECHR Series A, No. 155.
- Libyan Arab Jamahiriya v. United Kingdom (Provisional Measures)*. 14 April 1992. International Court of Justice, ICJ Reports, No. 88.

- Libyan Arab Jamahiriya v. United States of America* (Provisional Measures). 14 April 1992. International Court of Justice, ICJ Reports.
- McGonnell v. United Kingdom*. 8 February 2000. European Court for Human Rights, ECHR App. No. 28488/95.
- Nulyarimma v. Thompson*. 1 September 1999. Federal Court of Australia, FCA 1192.
- Polyukhovich v. The Commonwealth of Australia and Another*. 1991. 172 Commonwealth Law Reports 501 F.C. 91/026.
- Prosecutor's Application under Article 58(7)*. 27 February 2007. Situation in Darfur, the Sudan, The International Criminal Court, Pre-Trial Chamber I, No.: ICC-02/05.
- Prosecutor v. Ahmad Muhammad Harun ('Ahmad Harun') and Ali Muhammad Al Abd-Al-Rahman ('Ali Kushayb')*. 27 April 2007. Decision on The Prosecution Application Under Article 58(7) of The Statute, The International Criminal Court, Pre-Trial Chamber I, No.: ICC-02/05-01/07.
- Prosecutor v. Dusko Tadic A/K/A 'Dule'*. 10 August 1995. Decision on the Defence Motion on Jurisdiction, 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, IT-94-1.
- Prosecutor v. Furundzija*. 21 July 2000. 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, IT-95-17/1-A, App. Ch.
- Prosecutor v. Mathieu Ngudjolo Chui*. 6 July 2007. Decision on the Evidence and Information Provided by the Prosecution for the Issuance of a Warrant of Arrest for Mathieu Ngudjolo Chui Situation in the Democratic Republic of the Congo, The International Criminal Court, Pre-Trial Chamber I, unsealed on February 12, 2008, ICC-01/04-02/07.
- Prosecutor v. Goran Jelusic*. 5 July 2001. 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, Case No.: IT-95-10-A.
- Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo and Dominic Ongwen*. 29 February 2008. Request for Information from the Republic of Uganda on the Status of Execution of the Warrants of Arrests, The International Criminal Court, Pre-Trial Chamber II, No.: ICC-02/04-01/05- 247.
- Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo and Dominic Ongwen*. 8 November 2007. Decision to Convene a Status Conference on the Status of Cooperation for the Execution of the Warrants of Arrest in the Case of The Prosecutor v. Joseph Kony, The International Criminal Court, Pre-Trial Chamber II, No.: ICC-02/04-01/05.
- Prosecutor v. Laurent Semanza*. 15 May 2003. International Criminal Tribunal for Rwanda, ICTR, Case No. ICTR-97-20-T.

- Prosecutor v. Germain Katanga*. 2 July 2007. Warrant of Arrest for Germain Katanga, The International Criminal Court, Pre-Trial Chamber I, ICC-01/04-01/07-1-US-tENG, pursuant to the Decision ICC-01/04-01/07-24 Dated 18 November 2007, the Document was reclassified as 'Public'.
- Prosecutor v. Thomas Lubanga Dyilo*. 25 January 2006. Decision on the Prosecutor's Application for a Warrant of Arrest, Article 58, The International Criminal Court, Pre-Trial Chamber, ICC-01/04-01/06.
- Prosecutor v. Thomas Lubanga Dyilo*. 25 January 2006. Prosecution's Submission of Further Information and Materials, Pre Trial Chamber I, ICC-01/04-01/06.
- The Prosecutor v. Thomas Lubanga Dyilo*. 10 February 2006. Pre-Trial Chamber I, Decision on the Prosecutor's Application for a Warrant of Arrest, Article 58. ICC-01/04-01/06.
- Prosecutor v. Thomas Lubanga Dyilo*. 17 March 2006. Prosecution's Submission of Further Information and Materials, The International Criminal Court, Pre Trial Chamber I, ICC-01/04-01/06.
- Prosecutor v. Zlatko Aleksovski*. 24 March 2000. 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, Case No IT-95-14/1-A, App. Ch.
- Sramek v. Austria*. 22 October 1984. European Court for Human Rights, ECHR App. No. 8790/79, ECHR Series A, No. 54.
- S.S. '*Lotus*' Case. September 1927. Permanent Court of International Justice, Judgment No. 9, 12th Session, Series A – No. 10 Collection of Judgments A.W. Sijthoff's Publishing Company, Leiden.
- Stephen v. Attorney General*. 2000. Uganda Human Rights Commission, UHRC, Kampala, Complaint No. 357/2000.
- Sretko Damjanovic Case*. 12 March 1993. The District Military Court (Okruzni Vojni Sud), Sarajevo, Judgement No. K-I-14/93, BiH.
- United States of America v. John Demjanjuk*. 2002. United States District Court Northern District Of Ohio, Eastern Division, Case No. 1:99cv1193.
- Velasquez Rodriguez v. Honduras*. 29 July 1988. Inter-American Court for Human Rights, I-ACHR Series C, No. 4.
- W v. Switzerland*. 26 January 1993. European Court for Human Rights, ECHR App. No. 14379/88, ECHR Series A, No. 254-A.
- Walter v. Attorney General*. 2001. Uganda Human Rights Commission, UHRC, Gulu, Complaint No. UHRC/G/91/2001.
- Yasa v. Turkey*. 27 June 2002. European Court for Human Rights, ECHR App. No. 22281/93.

# Table of Legislation

- Amnesty Law. May 1996. Croatia, the Croatian Parliament.
- Agreement on Accountability and Reconciliation; between the Government of the Republic of Uganda and The Lord's Resistance Army/Movement. 29 June 2007. Juba, Sudan.
- Code pénal tel que modifié par l'ordonnance-loi n° 85-007. 14 February 1985.*  
Décret du 30 janvier 1940 portant Code pénal, *Journal officiel*, 2004-11-30, n° spécial.
- Criminal Procedure Code (Strafprozeßordnung, StPO). 7 September 1998. Federal Republic of Germany, Federal Law Gazette I. Available at: [www.iuscomp.org/gla/statutes/StPO.htm](http://www.iuscomp.org/gla/statutes/StPO.htm).
- Draft Code of Crimes against the Peace and Security of Mankind. 1996. International Law Commission Report.
- Hammurabi Code of Laws, In King, L. 2000. Hammurabi Code of Laws. Available at: <http://eqwc.evansville.edu/anthology/hammurabi.htm>.
- Interim Constitution of South Africa 1993 (1993), Assented to 25 January 1994. Available at: [www.polity.org.za/govdocs/legislation/1993/consti0.html](http://www.polity.org.za/govdocs/legislation/1993/consti0.html).
- Loi Modifiant Et Complétant Certaines Dispositions Du Code Pénal, Du Code De L'organisation Et De La Compétence Judiciaires, Du Code Pénal Militaire Et Du Code Judiciaire Militaire, En Application Du Statut De La Cour Pénale Internationale. 2005. République Démocratique du Congo, Ministère de la Justice. Available at: [www.nottingham.ac.uk/shared/shared\\_hrlcicju/Democratic\\_RepublicofCongo/TDRCLoiModifiantEtCompletantCertainesDispositionsDuCodePenalDuCodePenalMilitaire2005Frenchpdf.1](http://www.nottingham.ac.uk/shared/shared_hrlcicju/Democratic_RepublicofCongo/TDRCLoiModifiantEtCompletantCertainesDispositionsDuCodePenalDuCodePenalMilitaire2005Frenchpdf.1)
- Military Commissions Act of 2006. 17 October 2006. The United States, Pub. L. No. 109-366, 120 Stat. 2600.
- Military Justice Code, Law no. 023/2002. 18 November 2002. The Democratic Republic of the Congo (DRC).
- Projet De Loi Portant Mise En Oeuvre Du Statut De La Cour Pénale Internationale. 2002. The Democratic Republic of Congo. Available at: [www.iccnw.org/documents/DRCDraftLegFren2.pdf](http://www.iccnw.org/documents/DRCDraftLegFren2.pdf).
- The Amnesty Act. 2000. The Ugandan Amnesty Act. Available at: [www.cr.org/accord/uganda/accord11/downloads/2000\\_Jan\\_The\\_Amnesty\\_Act.doc](http://www.cr.org/accord/uganda/accord11/downloads/2000_Jan_The_Amnesty_Act.doc).
- The Constitution of Republic of Sudan. 28 March 1998. Republic of Sudan. Available at: [www.arabipu.org/pdb/RelatedArticlesGvnSPName.asp?SPName=CHRN&StructuredIndexCode=&LawBookID=211020011940683&Year1=&Year2=&YearGorH=](http://www.arabipu.org/pdb/RelatedArticlesGvnSPName.asp?SPName=CHRN&StructuredIndexCode=&LawBookID=211020011940683&Year1=&Year2=&YearGorH=).

- The Criminal Code of 1991. 1991. Republic of Sudan. Available at: [www.lawsofsudan.net/modules.php?name=Content&pa=showpage&pid=3](http://www.lawsofsudan.net/modules.php?name=Content&pa=showpage&pid=3).
- The Criminal Procedure Act, CPA. 1991. Republic of Sudan. Available at: [www.lawsofsudan.net/modules.php?name=Content&pa=showpage&pid=4](http://www.lawsofsudan.net/modules.php?name=Content&pa=showpage&pid=4).
- The Criminal Procedure Act, CPA, amended 2002. 2002. Republic of Sudan. Available at: [www.lawsofsudan.net/modules.php?name=Content&pa=showpage&pid=6](http://www.lawsofsudan.net/modules.php?name=Content&pa=showpage&pid=6).
- The Evidence Act. 2003. Republic of Sudan. Available at: [www.unsudanig.org/docs/The%20Evidence%20Act,%202003.pdf](http://www.unsudanig.org/docs/The%20Evidence%20Act,%202003.pdf).
- The German Constitution. 23 May 1949. Federal Republic of Germany. Available at: [www.servat.unibe.ch/law/icl/gm00000\\_.html](http://www.servat.unibe.ch/law/icl/gm00000_.html).
- The International Criminal Court Bill. Draft of 19 April 2004. Republic of Uganda.
- The International Criminal Court Bill. Draft of 2006. Republic of Uganda.
- The International Criminal Court Law. Adopted on 10 March 2010. Republic of Uganda.
- The Lebanese Amnesty Law. 1991. The Lebanese Republic, official Gazette.
- The National Security Act of 1999, amended 2001. July 2001. Republic of Sudan.
- The National Security Forces Act. 1999. Republic of Sudan. Available at: <http://p076.ezboard.com/fndbfm20.showPrevMessage?topicID=10.topic>.
- The Penal Code Act. 1970. Republic of Uganda. Available at: [www.ugandaonlinelawlibrary.com/files/free/The\\_Penal\\_Code\\_Act.pdf](http://www.ugandaonlinelawlibrary.com/files/free/The_Penal_Code_Act.pdf).
- The Police Forces Act. 1999. Republic of Sudan. Available at: [www.moi.gov.sd/ar/lownl.asp](http://www.moi.gov.sd/ar/lownl.asp).
- The Police General Regulations. 2003. Republic of Sudan. Available at: [www.unsudanig.org/docs/The%20Police%20General%20Regulation%20Act,%202003.pdf](http://www.unsudanig.org/docs/The%20Police%20General%20Regulation%20Act,%202003.pdf).
- The Prisons Act. 2003. Republic of Sudan. Available at: [www.unsudanig.org/docs/The%20Prisons%20Act,%202003.pdf](http://www.unsudanig.org/docs/The%20Prisons%20Act,%202003.pdf).
- The Ugandan Anti-Terrorism Act. 7 June 2002. Assented to by the President on 21 May 2002 and came into force on 7 June 2002.

# List of Abbreviations

ACHR	The African Commission for Human Rights
ADF	Allied Democratic Front
AMIS	African Union Mission in Sudan
ARLPI	Acholi Religious Leaders Peace Initiative
ASP	Assembly of State Parties
CAT	Committee Against Torture
CID	Criminal Investigation Department
CMI	Chieftaincy of Military Intelligence
CSOPNU	Civil Society Organizations for Peace in Northern Uganda
CW	Committee of the Whole in the Rome Conference
DPP	Directorate of Public Prosecutions
ECHR	European Court for Human Rights
ECJ	European Court of Justice
ERC	Emergency Relief Coordinator
FPLC	Forces Patriotiques pour la Libération du Congo
GA	The United Nations General Assembly
HRC	Human Rights Committee
HSM	Holy Spirit Movement
I-ACHR	Inter-American Court for Human Rights
ICC	International Criminal Court
ICCPR	International Covenant for Civil and Political Rights
ICJ	International Court of Justice
ICL	international criminal law
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia
IDP	internally displaced person
ILC	The International Law Commission
JATF	Joint Anti-Terrorism Task Force
JCCD	Jurisdiction, Complementarity and Cooperation Division
JEM	Justice and Equality Movement
JIC	Judicial Investigations Committee
LDU	Local Defence Units
LRA	Lord's Resistance Army
NATO	North Atlantic Treaty Organizations
NGO	non-governmental organization
NMRD	National Movement for Reform and Development
NRA	National Resistance Army

OAS	Organization of American States
OCHA	UN Office for the Coordination of Humanitarian Affairs
OTP	Office of the Prosecutor – ICC
PP	Public Prosecution
SC	Security Council
SCCED	Special Criminal Court on the Events in Darfur
SCSL	Special Court for Sierra Leone
SLM/A	Sudan Liberation Movement/Army
SOAT	Sudanese Organization against Torture
SPLM	Sudan People's Liberation Army
TRC	Truth and Reconciliation Commission
UHRA	Uganda Human Rights Activists
UHRC	Ugandan Human Rights Commission
UNAMID	United Nations African Union Mission in Darfur
UNLA	Uganda National Liberation Army
UNMIS	United Nations Mission in Sudan
UPC	Union of Congolese Patriot
UPDA	Uganda People's Democratic Army
UPDF	Ugandan Peoples' Defence Forces
UPDM	Uganda People's Democratic Movement
VCCU	Violent Crime Crack Unit

# Foreword

David Tolbert<sup>1</sup>

This book addresses a topic which is critically important to the future of international justice. I can think of no more urgent issue facing the international justice movement, which has made such great strides over the past 15 years, than the question of complementarity. While the topic is one of considerable discussion, including one of the key topics addressed at the recently concluded International Criminal Court (ICC) Review Conference held in Kampala, Uganda in June 2010, much more thought, both conceptual and practical, needs to be given to this subject.

Complementarity is indeed at the heart of the Rome Statute system, and it is the key to the fight against impunity. We are moving towards the closure of the *ad hoc* tribunals for the former Yugoslavia and Rwanda as well as the 'hybrid' courts, e.g., the Special Court of Sierra Leone. It is unlikely that there will be future *ad hoc* tribunals and the use of hybrid courts is uncertain. Thus, the enforcement of international humanitarian law will be left primarily to the ICC and to domestic judicial systems.

Against this background, the question of complementarity, that is the relationship between the ICC and domestic courts, is an urgent one. What does the term 'complementarity', which is not a word to be found in English language dictionaries and does not actually appear in the Rome Statute, actually mean in legal terms? What did the drafters of this innovative but somewhat vague term mean? What obligations does the complementarity principle imply with respect to the ICC itself and particularly to the Office of the Prosecutor? What duties does the complementarity principle place, or not place, on State Parties to the ICC Statute? How do supporters of international justice assist in making the complementarity principle operational?

In order to address these and other pertinent questions, Nidal Jurdi, who holds a Ph.D. in International Criminal Justice and Human Rights, University College Cork, National University of Ireland and is currently Human Rights Officer with the Office of the High Commission for Human Rights, has written an impressive

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