

Prof. Dr. Gerhard Werle
Humboldt-Universität zu Berlin



Lecture
International Criminal Justice

Legal Texts



A.	ICC Statute (Rome Statute of the International Criminal Court) [Extract]	3
B.	ICTY Statute (Statute of the International Criminal Tribunal for the Former Yugoslavia) [Extract]	15
C.	ICTR Statute (Statute of the International Criminal Tribunal for Rwanda) [Extract] 18	
D.	London Agreement of August 8 th , 1945 [Extract].....	21
E.	Nuremberg Charter (Charter of the International Military Tribunal) [Extract]	22
F.	Tokyo Charter (Charter of the International Military Tribunal for the Far East) [Extract]	23
G.	CCL No. 10 (Allied Control Council Law No. 10: Punishment of Persons Guilty of War Crimes, Crimes Against Peace and Crimes Against Humanity) [Extract]	24
H.	Nuremberg Principles.....	26
I.	(German) Code of Crimes Against International Law [Völkerstrafgesetzbuch, VStGB]	27



A. ICC Statute (Rome Statute of the International Criminal Court) [Extract]

Preamble

The States Parties to this Statute,
Conscious that all peoples are united by common bonds, their cultures pieced together in a shared heritage, and concerned that this delicate mosaic may be shattered at any time,
Mindful that during this century millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity,
Recognizing that such grave crimes threaten the peace, security and well-being of the world,
Affirming that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation,
Determined to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes,
Recalling that it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes,
Reaffirming the Purposes and Principles of the Charter of the United Nations, and in particular that all States shall refrain from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations,
Emphasizing in this connection that nothing in this Statute shall be taken as authorizing any State Party to intervene in an armed conflict or in the internal affairs of any State,

Determined to these ends and for the sake of present and future generations, to establish an independent permanent International Criminal Court in relationship with the United Nations system, with jurisdiction over the most serious crimes of concern to the international community as a whole,
Emphasizing that the International Criminal Court established under this Statute shall be complementary to national criminal jurisdictions,
Resolved to guarantee lasting respect for and the enforcement of international justice,
Have agreed as follows

Part 1

Establishment of the Court

Article 1

The Court

An International Criminal Court ("the Court") is hereby established. It shall be a permanent institution and shall have the power to exercise its jurisdiction over persons for the most serious crimes of international concern, as referred to in this Statute, and shall be complementary to national criminal jurisdictions. The jurisdiction and functioning of the Court shall be governed by the provisions of this Statute.

Article 2

Relationship of the Court with the United Nations

The Court shall be brought into relationship with the United Nations through an agreement to be approved by the Assembly of States Parties to this



Statute and thereafter concluded by the President of the Court on its behalf.

Article 3

Seat of the Court

1. The seat of the Court shall be established at The Hague in the Netherlands ("the host State").
2. The Court shall enter into a headquarters agreement with the host State, to be approved by the Assembly of States Parties and thereafter concluded by the President of the Court on its behalf.
3. The Court may sit elsewhere, whenever it considers it desirable, as provided in this Statute.

Article 4

Legal status and powers of the Court

1. The Court shall have international legal personality. It shall also have such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes.
2. The Court may exercise its functions and powers, as provided in this Statute, on the territory of any State Party and, by special agreement, on the territory of any other State.

Part 2

Jurisdiction, Admissibility and

Applicable Law

Article 5

Crimes within the jurisdiction of the Court

1. The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes:

- (a) The crime of genocide;
- (b) Crimes against humanity;
- (c) War crimes;
- (d) The crime of aggression.

2. The Court shall exercise jurisdiction over the crime of aggression once a provision is adopted in accordance with articles 121 and 123 defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime. Such a provision shall be consistent with the relevant provisions of the Charter of the United Nations.

Article 6

Genocide

For the purpose of this Statute, "genocide" means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

Article 7

Crimes against humanity

1. For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:
 - (a) Murder;
 - (b) Extermination;
 - (c) Enslavement;
 - (d) Deportation or forcible transfer of population;



- (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
 - (f) Torture;
 - (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
 - (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
 - (i) Enforced disappearance of persons;
 - (j) The crime of apartheid;
 - (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.
2. For the purpose of paragraph 1:
- (a) "Attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;
 - (b) "Extermination" includes the intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;
 - (c) "Enslavement" means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;
 - (d) "Deportation or forcible transfer of population" means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;
 - (e) "Torture" means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;
 - (f) "Forced pregnancy" means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy;
 - (g) "Persecution" means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;
 - (h) "The crime of apartheid" means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;



- (i) “Enforced disappearance of persons” means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.
3. For the purpose of this Statute, it is understood that the term “gender” refers to the two sexes, male and female, within the context of society. The term “gender” does not indicate any meaning different from the above.

Article 8

War crimes

1. The Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes.
2. For the purpose of this Statute, “war crimes” means:
- (a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:
- (i) Wilful killing;
 - (ii) Torture or inhuman treatment, including biological experiments;
 - (iii) Wilfully causing great suffering, or serious injury to body or health;
 - (iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
- (v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;
- (vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;
- (vii) Unlawful deportation or transfer or unlawful confinement;
- (viii) Taking of hostages.
- (b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:
- (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
 - (ii) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;
 - (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
 - (iv) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects



- or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;
- (v) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;
- (vi) Killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion;
- (vii) Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;
- (viii) The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;
- (ix) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
- (x) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
- (xi) Killing or wounding treacherously individuals belonging to the hostile nation or army;
- (xii) Declaring that no quarter will be given;
- (xiii) Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;
- (xiv) Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;
- (xv) Compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;
- (xvi) Pillaging a town or place, even when taken by assault;
- (xvii) Employing poison or poisoned weapons;
- (xviii) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;
- (xix) Employing bullets which expand or flatten easily in



- the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;
- (xx) Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to this Statute, by an amendment in accordance with the relevant provisions set forth in articles 121 and 123;
- (xxi) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
- (xxii) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions;
- (xxiii) Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;
- (xxiv) Intentionally directing attacks against buildings, material, medical units and transport, and personnel
- using the distinctive emblems of the Geneva Conventions in conformity with international law;
- (xxv) Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions;
- (xxvi) Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.
- (c) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause:
- (i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
- (iii) Taking of hostages;
- (iv) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally



- | | |
|---|---|
| <p>recognized as indispensable.</p> <p>(d) Paragraph 2 (c) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature;</p> <p>(e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:</p> <p>(i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;</p> <p>(ii) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;</p> <p>(iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;</p> <p>(iv) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes,</p> | <p>historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;</p> <p>(v) Pillaging a town or place, even when taken by assault;</p> <p>(vi) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions;</p> <p>(vii) Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;</p> <p>(viii) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;</p> <p>(ix) Killing or wounding treacherously a combatant adversary;</p> <p>(x) Declaring that no quarter will be given;</p> <p>(xi) Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously</p> |
|---|---|



endanger the health of such person or persons;
(xii) Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict;

- (f) Paragraph 2 (e) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups.
3. Nothing in paragraph 2 (c) and (e) shall affect the responsibility of a Government to maintain or re-establish law and order in the State or to defend the unity and territorial integrity of the State, by all legitimate means.

Article 9

Elements of Crimes

1. Elements of Crimes shall assist the Court in the interpretation and application of articles 6, 7 and 8. They shall be adopted by a two-thirds majority of the members of the Assembly of States Parties.
2. Amendments to the Elements of Crimes may be proposed by:
 - (a) Any State Party;
 - (b) The judges acting by an absolute majority;
 - (c) The Prosecutor.Such amendments shall be adopted by a two-thirds majority of the members of the Assembly of States Parties.
3. The Elements of Crimes and

amendments thereto shall be consistent with this Statute.

Article 10

Nothing in this Part shall be interpreted as limiting or prejudicing in any way existing or developing rules of international law for purposes other than this Statute.

Article 11

Jurisdiction ratione temporis

1. The Court has jurisdiction only with respect to crimes committed after the entry into force of this Statute.
2. If a State becomes a Party to this Statute after its entry into force, the Court may exercise its jurisdiction only with respect to crimes committed after the entry into force of this Statute for that State, unless that State has made a declaration under article 12, paragraph 3.

Article 12

Preconditions to the exercise of jurisdiction

1. A State which becomes a Party to this Statute thereby accepts the jurisdiction of the Court with respect to the crimes referred to in article 5.
2. In the case of article 13, paragraph (a) or (c), the Court may exercise its jurisdiction if one or more of the following States are Parties to this Statute or have accepted the jurisdiction of the Court in accordance with paragraph 3:
 - (a) The State on the territory of which the conduct in question occurred or, if the crime was committed on board a vessel or aircraft, the State of registration of that vessel or aircraft;
 - (b) The State of which the person accused of the crime is a national.
3. If the acceptance of a State which is not a Party to this Statute is required



under paragraph 2, that State may, by declaration lodged with the Registrar, accept the exercise of jurisdiction by the Court with respect to the crime in question. The accepting State shall cooperate with the Court without any delay or exception in accordance with Part 9.

Article 13

Exercise of jurisdiction

The Court may exercise its jurisdiction with respect to a crime referred to in article 5 in accordance with the provisions of this Statute if:

- (a) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by a State Party in accordance with article 14;
- (b) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations; or
- (c) The Prosecutor has initiated an investigation in respect of such a crime in accordance with article 15.

Article 14

Referral of a situation by a State Party

1. A State Party may refer to the Prosecutor a situation in which one or more crimes within the jurisdiction of the Court appear to have been committed requesting the Prosecutor to investigate the situation for the purpose of determining whether one or more specific persons should be charged with the commission of such crimes.
2. As far as possible, a referral shall specify the relevant circumstances and be accompanied by such supporting documentation as is available to the State referring the situation.

Article 15

Prosecutor

1. The Prosecutor may initiate investigations proprio motu on the basis of information on crimes within the jurisdiction of the Court.
2. The Prosecutor shall analyse the seriousness of the information received. For this purpose, he or she may seek additional information from States, organs of the United Nations, intergovernmental or non-governmental organizations, or other reliable sources that he or she deems appropriate, and may receive written or oral testimony at the seat of the Court.
3. If the Prosecutor concludes that there is a reasonable basis to proceed with an investigation, he or she shall submit to the Pre-Trial Chamber a request for authorization of an investigation, together with any supporting material collected. Victims may make representations to the Pre-Trial Chamber, in accordance with the Rules of Procedure and Evidence.
4. (...)
5. (...)

Article 16

Deferral of investigation or prosecution

No investigation or prosecution may be commenced or proceeded with under this Statute for a period of 12 months after the Security Council, in a resolution adopted under Chapter VII of the Charter of the United Nations, has requested the Court to that effect; that request may be renewed by the Council under the same conditions.

Article 17

Issues of admissibility

1. Having regard to paragraph 10 of the Preamble and article 1, the Court



shall determine that a case is inadmissible where:

- (a) The case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution;
 - (b) The case has been investigated by a State which has jurisdiction over it and the State has decided not to prosecute the person concerned, unless the decision resulted from the unwillingness or inability of the State genuinely to prosecute;
 - (c) The person concerned has already been tried for conduct which is the subject of the complaint, and a trial by the Court is not permitted under article 20, paragraph 3;
 - (d) The case is not of sufficient gravity to justify further action by the Court.
2. In order to determine unwillingness in a particular case, the Court shall consider, having regard to the principles of due process recognized by international law, whether one or more of the following exist, as applicable:
- (a) The proceedings were or are being undertaken or the national decision was made for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court referred to in article 5;
 - (b) There has been an unjustified delay in the proceedings which in the circumstances is inconsistent with an intent to bring the person concerned to justice;
 - (c) The proceedings were not or are not being conducted independently or impartially, and they were or are being conducted in a manner which, in the circumstances, is inconsistent

with an intent to bring the person concerned to justice.

3. In order to determine inability in a particular case, the Court shall consider whether, due to a total or substantial collapse or unavailability of its national judicial system, the State is unable to obtain the accused or the necessary evidence and testimony or otherwise unable to carry out its proceedings.

Article 20

Ne bis in idem

1. Except as provided in this Statute, no person shall be tried before the Court with respect to conduct which formed the basis of crimes for which the person has been convicted or acquitted by the Court.
2. No person shall be tried by another court for a crime referred to in article 5 for which that person has already been convicted or acquitted by the Court.
3. No person who has been tried by another court for conduct also proscribed under article 6, 7 or 8 shall be tried by the Court with respect to the same conduct unless the proceedings in the other court:
 - (a) Were for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court; or
 - (b) Otherwise were not conducted independently or impartially in accordance with the norms of due process recognized by international law and were conducted in a manner which, in the circumstances, was inconsistent with an intent to bring the person concerned to justice.

Article 21

Applicable law



1. The Court shall apply:
 - (a) In the first place, this Statute, Elements of Crimes and its Rules of Procedure and Evidence;
 - (b) In the second place, where appropriate, applicable treaties and the principles and rules of international law, including the established principles of the international law of armed conflict;
 - (c) Failing that, general principles of law derived by the Court from national laws of legal systems of the world including, as appropriate, the national laws of States that would normally exercise jurisdiction over the crime, provided that those principles are not inconsistent with this Statute and with international law and internationally recognized norms and standards.
2. The Court may apply principles and rules of law as interpreted in its previous decisions.
3. The application and interpretation of law pursuant to this article must be consistent with internationally recognized human rights, and be without any adverse distinction founded on grounds such as gender as defined in article 7, paragraph 3, age, race, colour, language, religion or belief, political or other opinion, national, ethnic or social origin, wealth, birth or other status.

Part 3

General Principles of Criminal Law

Article 22

Nullum crimen sine lege

1. A person shall not be criminally responsible under this Statute unless the conduct in question constitutes, at the time it takes place, a crime within

- the jurisdiction of the Court.
2. The definition of a crime shall be strictly construed and shall not be extended by analogy. In case of ambiguity, the definition shall be interpreted in favour of the person being investigated, prosecuted or convicted.
3. This article shall not affect the characterization of any conduct as criminal under international law independently of this Statute.

Article 23

Nulla poena sine lege

A person convicted by the Court may be punished only in accordance with this Statute.

Article 24

Non-retroactivity ratione personae

1. No person shall be criminally responsible under this Statute for conduct prior to the entry into force of the Statute.
2. In the event of a change in the law applicable to a given case prior to a final judgement, the law more favourable to the person being investigated, prosecuted or convicted shall apply.

Article 25

Individual criminal responsibility

1. The Court shall have jurisdiction over natural persons pursuant to this Statute.
2. A person who commits a crime within the jurisdiction of the Court shall be individually responsible and liable for punishment in accordance with this Statute.
3. In accordance with this Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person:
 - (a) Commits such a crime, whether as



- an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible;
- (b) Orders, solicits or induces the commission of such a crime which in fact occurs or is attempted;
 - (c) For the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission;
 - (d) In any other way contributes to the commission or attempted commission of such crime by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:
 - (i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court; or
 - (ii) Be made in the knowledge of the intention of the group to commit the crime;
 - (e) In respect of the crime of genocide, directly and publicly incites others to commit genocide;
 - (f) Attempts to commit such a crime by taking action that commences its execution by means of a substantial step, but the crime does not occur because of circumstances independent of the person's intentions. However, a person who abandons the effort to commit the crime or otherwise prevents the completion of the crime shall not be liable for punishment under this Statute for the attempt to commit that crime if that person completely and

voluntarily gave up the criminal purpose.

- 4. No provision in this Statute relating to individual criminal responsibility shall affect the responsibility of States under international law.

Article 26

Exclusion of jurisdiction over persons under eighteen

The Court shall have no jurisdiction over any person who was under the age of 18 at the time of the alleged commission of a crime.

Article 27

Irrelevance of official capacity

- 1. This Statute shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or Government, a member of a Government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Statute, nor shall it, in and of itself, constitute a ground for reduction of sentence.
- 2. Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person.

Article 28

Responsibility of commanders and other superiors

In addition to other grounds of criminal responsibility under this Statute for crimes within the jurisdiction of the Court:

- (a) A military commander or person effectively acting as a military commander shall be criminally responsible for crimes within the jurisdiction of the Court committed



by forces under his or her effective command and control, or effective authority and control as the case may be, as a result of his or her failure to exercise control properly over such forces, where:

- (i) That military commander or person either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes; and
 - (ii) That military commander or person failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.
- (b) With respect to superior and subordinate relationships not described in paragraph (a), a superior shall be criminally responsible for crimes within the jurisdiction of the Court committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates, where:
- (i) The superior either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such crimes;
 - (ii) The crimes concerned activities that were within the effective responsibility and control of the superior; and
 - (iii) The superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

Article 29

Non-applicability of statute of limitations

The crimes within the jurisdiction of the Court shall not be subject to any statute of limitations.

Article 30

Mental element

1. Unless otherwise provided, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with intent and knowledge.
2. For the purposes of this article, a person has intent where:
 - (a) In relation to conduct, that person means to engage in the conduct;
 - (b) In relation to a consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events.
3. For the purposes of this article, “knowledge” means awareness that a circumstance exists or a consequence will occur in the ordinary course of events. “Know” and “knowingly” shall be construed accordingly.

Article 31

Grounds for excluding criminal responsibility

1. In addition to other grounds for excluding criminal responsibility provided for in this Statute, a person shall not be criminally responsible if, at the time of that person’s conduct:
 - (a) The person suffers from a mental disease or defect that destroys that person’s capacity to appreciate the unlawfulness or nature of his or her conduct, or capacity to control his or her conduct to conform to the requirements of law;



- (b) The person is in a state of intoxication that destroys that person's capacity to appreciate the unlawfulness or nature of his or her conduct, or capacity to control his or her conduct to conform to the requirements of law, unless the person has become voluntarily intoxicated under such circumstances that the person knew, or disregarded the risk, that, as a result of the intoxication, he or she was likely to engage in conduct constituting a crime within the jurisdiction of the Court;
- (c) The person acts reasonably to defend himself or herself or another person or, in the case of war crimes, property which is essential for the survival of the person or another person or property which is essential for accomplishing a military mission, against an imminent and unlawful use of force in a manner proportionate to the degree of danger to the person or the other person or property protected. The fact that the person was involved in a defensive operation conducted by forces shall not in itself constitute a ground for excluding criminal responsibility under this subparagraph;
- (d) The conduct which is alleged to constitute a crime within the jurisdiction of the Court has been caused by duress resulting from a threat of imminent death or of continuing or imminent serious bodily harm against that person or another person, and the person acts necessarily and reasonably to avoid this threat, provided that the person does not intend to cause a greater harm than the one sought to be avoided. Such a threat may either be:
- (i) Made by other persons; or

- (ii) Constituted by other circumstances beyond that person's control.
2. The Court shall determine the applicability of the grounds for excluding criminal responsibility provided for in this Statute to the case before it.
3. At trial, the Court may consider a ground for excluding criminal responsibility other than those referred to in paragraph 1 where such a ground is derived from applicable law as set forth in article 21. The procedures relating to the consideration of such a ground shall be provided for in the Rules of Procedure and Evidence.

Article 32

Mistake of fact or mistake of law

1. A mistake of fact shall be a ground for excluding criminal responsibility only if it negates the mental element required by the crime.
2. A mistake of law as to whether a particular type of conduct is a crime within the jurisdiction of the Court shall not be a ground for excluding criminal responsibility. A mistake of law may, however, be a ground for excluding criminal responsibility if it negates the mental element required by such a crime, or as provided for in article 33.

Article 33

Superior orders and prescription of law

1. The fact that a crime within the jurisdiction of the Court has been committed by a person pursuant to an order of a Government or of a superior, whether military or civilian, shall not relieve that person of criminal responsibility unless:
- (a) The person was under a legal obligation to obey orders of the Government or the superior in



- question;
(b) The person did not know that the order was unlawful; and
(c) The order was not manifestly

- unlawful.
2. For the purposes of this article, orders to commit genocide or crimes against humanity are manifestly unlawful.



***B. ICTY Statute (Statute of the International Criminal
Tribunal for the Former Yugoslavia) [Extract]***

Article 1

*Competence of the International
Tribunal*

The International Tribunal shall have the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991 in accordance with the provisions of the present Statute.

Article 2

*Grave breaches of the Geneva
Conventions of 1949*

The International Tribunal shall have the power to prosecute persons committing or ordering to be committed grave breaches of the Geneva Conventions of 12 August 1949, namely the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

- a) wilful killing;
- b) tortures or inhuman treatment, including biological experiments;
- c) wilfully causing great suffering or serious injury to body or health;
- d) extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
- e) compelling a prisoner of war or a civilian to serve in the forces of a hostile power;
- f) wilfully depriving a prisoner of war or a civilian of the rights of fair and regular trial;
- g) unlawful deportation or transfer or unlawful confinement of a civilian;
- h) taking civilians as hostages.

Article 3

Violations of the laws or customs of war

The International Tribunal shall have the power to prosecute persons violating the laws or customs of war. Such violations shall include, but not be limited to:

- a) employment of poisonous weapons or other weapons calculated to cause unnecessary suffering;
- b) wanton destruction of cities, towns or villages, or devastation not justified by military necessity;
- c) attack, or bombardment, by whatever means, of undefended towns, villages, dwellings, or buildings;
- d) seizure of, destruction or wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science;
- e) plunder of public or private property.

Article 4

Genocide

1. The International Tribunal shall have the power to prosecute persons committing genocide as defined in paragraph 2 of this article or of committing any of the other acts enumerated in paragraph 3 of this article.
2. Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
 - a) killing members of the group;
 - b) causing serious bodily or mental harm to members of the group;
 - c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;



- d) imposing measures intended to prevent births within the group;
 - e) forcibly transferring children of the group to another group.
3. The following acts shall be punishable:
- a) genocide;
 - b) conspiracy to commit genocide;
 - c) direct and public incitement to commit genocide;
 - d) attempt to commit genocide;
 - e) complicity in genocide.

Article 5

Crimes against humanity

The International Tribunal shall have the power to prosecute persons responsible for the following crimes when committed in armed conflict, whether international or internal in character, and directed against any civilian population:

- a) murder;
- b) extermination;
- c) enslavement;
- d) deportation;
- e) imprisonment;
- f) torture;
- g) rape;
- h) persecutions on political, racial and religious grounds;
- i) other inhumane acts.

Article 7

Individual criminal responsibility

1. A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 5 of the present Statute, shall be individually responsible for the crime.
2. The official position of any accused person, whether as Head of State or Government or as a responsible Government official, shall not relieve such person of criminal responsibility nor mitigate punishment.
3. The fact that any of the acts referred

to in articles 2 to 5 of the present Statute was committed by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

4. The fact that an accused person acted pursuant to an order of a Government or of a superior shall not relieve him of criminal responsibility, but may be considered in mitigation of punishment if the International Tribunal determines that justice so requires.

Article 8

Territorial and temporal jurisdiction

The territorial jurisdiction of the International Tribunal shall extend to the territory of the former Socialist Federal Republic of Yugoslavia, including its land surface, airspace and territorial waters. The temporal jurisdiction of the International Tribunal shall extend to a period beginning on 1 January 1991.

Article 9

Concurrent jurisdiction

1. The International Tribunal and national courts shall have concurrent jurisdiction to prosecute persons for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1 January 1991.
2. The International Tribunal shall have primacy over national courts. At any stage of the procedure, the International Tribunal may formally request national courts to defer to the competence of the International Tribunal in accordance with the present Statute and the Rules of

Prof. Dr. G. Werle
Dr. J. Bung
Humboldt-Universität zu
Berlin

LEGAL TEXTS
INTERNATIONAL CRIMINAL JUSTICE
SOMMERSEMESTER 2010



Procedure and Evidence of the
International Tribunal. |



C. ICTR Statute (Statute of the International Criminal Tribunal for Rwanda) [Extract]

Article 1

Competence of the International Tribunal for Rwanda

The International Tribunal for Rwanda shall have the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994, in accordance with the provisions of the present Statute.

Article 2

Genocide

1. The International Tribunal for Rwanda shall have the power to prosecute persons committing genocide as defined in paragraph 2 of this Article or of committing any of the other acts enumerated in paragraph 3 of this Article.
2. Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
 - a) Killing members of the group;
 - b) Causing serious bodily or mental harm to members of the group;
 - c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
 - d) Imposing measures intended to prevent births within the group;
 - e) Forcibly transferring children of the group to another group.
3. The following acts shall be punishable:

- a) Genocide;
- b) Conspiracy to commit genocide;
- c) Direct and public incitement to commit genocide;
- d) Attempt to commit genocide;
- e) Complicity in genocide.

Article 3

Crimes against Humanity

The International Tribunal for Rwanda shall have the power to prosecute persons responsible for the following crimes when committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds:

- a) Murder;
- b) Extermination;
- c) Enslavement;
- d) Deportation;
- e) Imprisonment;
- f) Torture;
- g) Rape;
- h) Persecutions on political, racial and religious grounds;
- i) Other inhumane acts.

Article 4

Violations of Article 3 common to the Geneva Conventions and of Additional Protocol II

The International Tribunal for Rwanda shall have the power to prosecute persons committing or ordering to be committed serious violations of Article 3 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, and of Additional Protocol II thereto of 8 June 1977. These violations shall include, but shall not be limited to:



- a) Violence to life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;
- b) Collective punishments;
- c) Taking of hostages;
- d) Acts of terrorism;
- e) Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;
- f) Pillage;
- g) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilised peoples;
- h) Threats to commit any of the foregoing acts.

Article 6

Individual Criminal Responsibility

1. A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 4 of the present Statute, shall be individually responsible for the crime.
2. The official position of any accused person, whether as Head of State or Government or as a responsible Government official, shall not relieve such person of criminal responsibility nor mitigate punishment.
3. The fact that any of the acts referred to in articles 2 to 4 of the present Statute was committed by a subordinate does not relieve his or her superior of criminal responsibility if he or she knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to

prevent such acts or to punish the perpetrators thereof.

4. The fact that an accused person acted pursuant to an order of a Government or of a superior shall not relieve him or her of criminal responsibility, but may be considered in mitigation of punishment if the International Tribunal for Rwanda determines that justice so requires.

Article 7

Territorial and temporal jurisdiction

The territorial jurisdiction of the International Tribunal for Rwanda shall extend to the territory of Rwanda including its land surface and airspace as well as to the territory of neighbouring States in respect of serious violations of international humanitarian law committed by Rwandan citizens. The temporal jurisdiction of the International Tribunal for Rwanda shall extend to a period beginning on 1 January 1994 and ending on 31 December 1994.

Article 8

Concurrent jurisdiction

1. The International Tribunal for Rwanda and national courts shall have concurrent jurisdiction to prosecute persons for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens for such violations committed in the territory of the neighbouring States, between 1 January 1994 and 31 December 1994.
2. The International Tribunal for Rwanda shall have the primacy over the national courts of all States. At any stage of the procedure, the International Tribunal for Rwanda may formally request national courts to defer to its competence in accordance with the present Statute and the Rules of Procedure and

Prof. Dr. G. Werle
Dr. J. Bung
Humboldt-Universität zu
Berlin

LEGAL TEXTS
INTERNATIONAL CRIMINAL JUSTICE
SOMMERSEMESTER 2010



Evidence of the International | Tribunal for Rwanda.



D. London Agreement of August 8th, 1945 [Extract]

Agreement by the Government of the United States of America, the Provisional Government of the French Republic, the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Union of Soviet Socialist Republics for the Prosecution and Punishment of the Major War Criminals of the European Axis

whereas the United Nations have from time to time made declarations of their intention that War Criminals shall be brought to justice;

and whereas the Moscow Declaration of the 30th October 1943 on German atrocities in Occupied Europe stated that those German Officers and men and members of the Nazi Party who have been responsible for or have taken a consenting part in atrocities and crimes will be sent back to the countries in which their abominable deeds were done in order that they may be judged and punished according to the laws of these liberated countries and of the free Governments that will be created therein;

and whereas this Declaration was stated to be without prejudice to the case of major criminals whose offenses have no particular geographical location and who will be punished by the joint decision of the Governments of the Allies;

now therefore the Government of the United States of America, the Provisional Government of the French Republic, the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Union of Soviet Socialist Republics (hereinafter called "the Signatories") acting in the interests of all the United Nations and by their representatives duly authorized thereto have concluded this Agreement.

Article 1

There shall be established after consultation with the Control Council for Germany an International Military Tribunal for the trial of war criminals whose offenses have no particular geographical location whether they be accused individually or in their capacity as members of the organizations or groups or in both capacities.



E. Nuremberg Charter (Charter of the International Military Tribunal) [Extract]

Article 6

The Tribunal established by the Agreement referred to in Article 1 hereof for the trial and punishment of the major war criminals of the European Axis countries shall have the power to try and punish persons who, acting in the interests of the European Axis countries, whether as individuals or as members of organizations, committed any of the following crimes.

The following acts, or any of them, are crimes coming within the jurisdiction of the Tribunal for which there shall be individual responsibility:

- a) *Crimes against Peace*: namely, planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing;
- b) *War Crimes*: namely, violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labor or for any purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or

devastation not justified by military necessity;

- c) *Crimes against Humanity*: namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war; or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.

Leaders, organizers, instigators and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any persons in execution of such plan.

Article 7

The official position of the defendants, whether as Heads of State or responsible officials in Government Departments, shall not be considered as freeing them from responsibility or mitigating punishment.

Article 8

The fact that the Defendant acted pursuant to order of his Government or of a superior shall not free him from responsibility, but may be considered in mitigation of punishment if the Tribunal determines that justice so requires.



***F. Tokyo Charter (Charter of the International Military
Tribunal for the Far East) [Extract]***

Article 5

Jurisdiction Over Persons and Offences

The Tribunal shall have the power to try and punish Far Eastern war criminals who as individuals or as members of organizations are charged with offences which include Crimes against Peace.

The following acts, or any of them, are crimes coming within the jurisdiction of the Tribunal for which there shall be individual responsibility:

- a) Crimes against Peace: Namely, the planning, preparation, initiation or waging of a declared or undeclared war of aggression, or a war in violation of international law, treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing;
- b) Conventional War Crimes: Namely, violations of the laws or customs of war;
- c) Crimes against Humanity: Namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political or racial grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated. Leaders, organizers, instigators and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any person in execution of such plan.

Article 6

Responsibility of Accused

Neither the official position, at any time, of an accused, nor the fact that an accused acted pursuant to order of his government or of a superior shall, of itself, be sufficient to free such accused from responsibility for any crime with which he is charged, but such circumstances may be considered in mitigation of punishment if the Tribunal determines that justice so requires.



***G. CCL No. 10 (Allied Control Council Law No. 10:
Punishment of Persons Guilty of War Crimes, Crimes Against
Peace and Crimes Against Humanity) [Extract]***

Article II

1. Each of the following acts is recognized as a crime:
 - (a) *Crimes against Peace*. Initiation of invasions of other countries and wars of aggression in violation of international laws and treaties, including but not limited to planning, preparation, initiation or waging a war of aggression, a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing.
 - (b) *War Crimes*. Atrocities or offenses against persons or property, constituting violations of the laws or customs of war, including but not limited to, murder, ill-treatment or deportation to slave labour or for any other purpose, of civilian population from occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity.
 - (c) *Crimes against Humanity*. Atrocities and offenses, including but not limited to murder, extermination, enslavement, deportation, imprisonment, torture, rape, or other inhumane acts committed against any civilian population, or persecutions on political, racial or religious grounds whether or not in violation of the domestic laws of the country where perpetrated.
 - (d) Membership in categories of a criminal group or organization declared criminal by the International Military Tribunal.
2. Any person without regard to nationality or the capacity in which he acted, is deemed to have committed a crime as defined in paragraph 1 of this Article, if he was
 - (a) a principal or;
 - (b) was an accessory to the commission of any such crime or ordered or abetted the same or;
 - (c) took a consenting part therein or;
 - (d) was connected with plans or enterprises involving its commission or;
 - (e) was a member of any organization or group connected with the commission of any such crime or;
 - (f) with reference to paragraph 1 (a), if he held a high political, civil or military (including General Staff) position in Germany or in one of its Allies, co-belligerents or satellites or held high position in the financial, industrial or economic life of any such country.
3. Any persons found guilty of any of the crimes above mentioned may upon conviction be punished as shall be determined by the tribunal to be just. Such punishment may consist of one or more of the following:
 - (a) Death.



- (b) Imprisonment for life or a term of years, with or without hard labor.
- (c) Fine, and imprisonment with or without hard labour, in lieu thereof.
- (d) Forfeiture of property.
- (e) Restitution of property wrongfully acquired.
- (f) Deprivation of some or all civil rights.

Any property declared to be forfeited or the restitution of which is ordered by the Tribunal shall be delivered to the Control Council for Germany, which shall decide on its disposal.

- 4. (a) The official position of any person, whether as Head of State or as a responsible official in a Government Department, does not free him from responsibility for a crime or entitle him to mitigation of punishment.
- (b) The fact that any person acted pursuant to the order of his Government or of a superior does not free him from responsibility for a crime, but may be considered in mitigation.

In any trial or prosecution for a crime herein referred to, the accused shall not be entitled to the benefits of any statute of limitation in respect of the period from 30 January 1933 to 1 July 1945, nor shall any immunity, pardon or amnesty granted under the Nazi regime be admitted as a bar to trial or punishment.



H. Nuremberg Principles

Principle I

Any person who commits an act which constitutes a crime under international law is responsible therefore and liable to punishment.

Principle II

The fact that internal law does not impose a penalty for an act which constitutes a crime under international law does not relieve the person who committed the act from responsibility under international law.

Principle III

The fact that a person who committed an act which constitutes a crime under international law acted as Head of State or responsible government official does not relieve him from responsibility under international law.

Principle IV

The fact that a person acted pursuant to order of his Government or of a superior does not relieve him from responsibility under international law, provided a moral choice was in fact possible to him.

Principle V

Any person charged with a crime under international law has the right to a fair trial on the facts and law.

Principle VI

The crimes hereinafter set out are punishable as crimes under international law:

- (a) Crimes against peace:
 - (i) Planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances;
 - (ii) Participation in a common plan or conspiracy for the accomplishment of any of the acts mentioned under (i).
- (b) War Crimes: Violations of the laws or customs of war which include, but are not limited to, murder, ill-treatment or deportation to slave-labour or for any other purpose of the civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns, or villages, or devastation not justified by military necessity.
- (c) Crimes against humanity: Murder, extermination, enslavement, deportation and other inhumane acts done against any civilian population, or persecutions on political, racial, or religious grounds, when such acts are done or such persecutions are carried on in execution of or in connection with any crime against peace or any war crime.

Principle VII

Complicity in the commission of a crime against peace, a war crime, or a crime against humanity as set forth in Principle VI is a crime under international law.



I. (German) Code of Crimes Against International Law

[Völkerstrafgesetzbuch, VStGB]

Part 1¹

General provisions

Section 1

Scope of application

This Act shall apply to all criminal offences against international law designated under this Act, to serious criminal offences² designated therein even when the offence was committed abroad and bears no relation to Germany.

Section 2

Application of the general law

The general criminal law shall apply to offences pursuant to this Act so far as

¹ Unofficial translation by Brian Duffet, reprinted by kind permission of the German Federal Ministry of Justice.

² In German law the term “serious criminal offence” (*Verbrechen*) is used to denote criminal offences (*Straftaten*) that are punishable with not less than one year of imprisonment. Mitigating (and aggravating) circumstances - as set out for instance in section 8(5) - are to be disregarded in this respect. As a result, all criminal offences in the CCIL are “serious criminal offences” (*Verbrechen*) with the sole exception of those in sections 13 and 14. Please note that the terminological differentiation between “criminal offences” (*Straftaten*) and “serious criminal offences” (*Verbrechen*) is, for technical reasons, not reflected everywhere in this translation.

this Act does not make special provision in sections 1 and 3 to 5.

Section 3

Acting upon orders

Whoever commits an offence pursuant to sections 8 to 14 in execution of a military order or of an order comparable in its actual binding effect shall have acted without guilt so far as the perpetrator does not realise that the order is unlawful and so far as it is also not manifestly unlawful.

Section 4

Responsibility of military commanders and other superiors

- (1) A military commander or civilian superior who omits to prevent his or her subordinate from committing an offence pursuant to this Act shall be punished in the same way as a perpetrator of the offence committed by that subordinate. Section 13 subsection 2 of the Criminal Code shall not apply in this case.
- (2) Any person effectively giving orders or exercising command and control in a unit shall be deemed equivalent to a military commander. Any person effectively exercising command and control in a civil organisation or in an enterprise shall be deemed equivalent to a civilian superior.

Section 5

Non-applicability of statute of limitations

The prosecution of serious criminal offences pursuant to this Act and the execution of sentences imposed on their



account shall not be subject to any statute of limitations.

Part 2

Crimes against international law

Chapter 1

Genocide and crimes against humanity

Section 6

Genocide

(1) Whoever with the intent to destroy, in whole or in part, a national, racial, religious or ethnic group as such

1. kills a member of the group,
2. causes serious bodily or mental harm to a member of the group, especially of the kind referred to in section 226 of the Criminal Code,
3. inflicts on the group conditions of life calculated to bring about its physical destruction in whole or in part,
4. imposes measures intended to prevent births within the group,
5. forcibly transfers a child of the group to another group

shall be punished with imprisonment for life.

(2) In less serious cases referred to under subsection (1), numbers 2 to 5, the punishment shall be imprisonment for not less than five years .

Section 7

Crimes against humanity

(1) Whoever, as part of a widespread or systematic attack directed against any civilian population,

1. kills a person,
2. inflicts, with the intent of destroying a population in whole or in part, conditions of life on that population or on parts thereof, being conditions calculated to bring about its physical destruction in whole or in part,
3. traffics in persons, particularly in women or children, or whoever enslaves a person in another way and in doing so arrogates to himself a right of ownership over that person,
4. deports or forcibly transfers, by expulsion or other coercive acts, a person lawfully present in an area to another State or another area in contravention of a general rule of international law,
5. tortures a person in his or her custody or otherwise under his or her control by causing that person substantial physical or mental harm or suffering where such harm or suffering does not arise only from sanctions that are compatible with international law,
6. sexually coerces, rapes, forces into prostitution or deprives a person of his or her reproductive capacity, or confines a woman forcibly made pregnant with the intent of affecting the ethnic composition of any population,
7. causes a person's enforced disappearance, with the intention of removing him or her from the protection of the law for a prolonged period of time,
 - (a) by abducting that person on behalf of or with the approval of a State or a political organisation, or by otherwise severely depriving such person of his or her physical liberty, followed by



a failure immediately to give truthful information, upon inquiry, on that person's fate and whereabouts, or

(b) by refusing, on behalf of a State or of a political organisation or in contravention of a legal duty, to give information immediately on the fate and whereabouts of the person deprived of his or her physical liberty under the circumstances referred to under letter (a) above, or by giving false information thereon,

8. causes another person severe physical or mental harm, especially of the kind referred to in section 226 of the Criminal Code,

9. severely deprives, in contravention of a general rule of international law, a person of his or her physical liberty, or

10. persecutes an identifiable group or collectivity by depriving such group or collectivity of fundamental human rights, or by substantially restricting the same, on political, racial, national, ethnic, cultural or religious, gender or other grounds that are recognised as impermissible under the general rules of international law

shall be punished, in the cases referred to under numbers 1 and 2, with imprisonment for life, in the cases referred to under numbers 3 to 7, with imprisonment for not less than five years, and, in the cases referred to under numbers 8 to 10, with imprisonment for not less than three years.

(2) In less serious cases under subsection (1), number 2, the punishment shall be imprisonment for not less than five years, in less serious cases under subsection (1), numbers 3 to 7, imprisonment for not less than two years, and in less serious cases under

subsection (1), numbers 8 and 9, imprisonment for not less than one year.

(3) Where the perpetrator causes the death of a person through an offence pursuant to subsection (1), numbers 3 to 10, the punishment shall be imprisonment for life or for not less than ten years in cases under subsection (1), numbers 3 to 7, and imprisonment for not less than five years in cases under subsection (1), numbers 8 to 10.

(4) In less serious cases under subsection (3) the punishment for an offence pursuant to subsection (1), numbers 3 to 7, shall be imprisonment for not less than five years, and for an offence pursuant to subsection (1), numbers 8 to 10, imprisonment for not less than three years.

(5) Whoever commits a crime pursuant to subsection (1) with the intention of maintaining an institutionalised regime of systematic oppression and domination by one racial group over any other shall be punished with imprisonment for not less than five years so far as the offence is not punishable more severely pursuant to subsection (1) or subsection (3). In less serious cases the punishment shall be imprisonment for not less than three years so far as the offence is not punishable more severely pursuant to subsection (2) or subsection (4).

Chapter 2

War crimes

Section 8

War crimes against persons

(1) Whoever in connection with an international armed conflict or with an armed conflict not of an international character



1. kills a person who is to be protected under international humanitarian law,

2. takes hostage a person who is to be protected under international humanitarian law,

3. treats a person who is to be protected under international humanitarian law cruelly or inhumanly by causing him or her substantial physical or mental harm or suffering, especially by torturing or mutilating that person,

4. sexually coerces, rapes, forces into prostitution or deprives a person who is to be protected under international humanitarian law of his or her reproductive capacity, or confines a woman forcibly made pregnant with the intent of affecting the ethnic composition of any population,

5. conscripts children under the age of fifteen years into the armed forces, or enlists them in the armed forces or in armed groups, or uses them to participate actively in hostilities,

6. deports or forcibly transfers, by expulsion or other coercive acts, a person who is to be protected under international humanitarian law and lawfully present in an area to another State or another area in contravention of a general rule of international law, or

7. imposes on, or executes a substantial sentence, in particular the death penalty or imprisonment, in respect of a person who is to be protected under international humanitarian law, without that person having been sentenced in a fair and regular trial affording the legal guarantees required by international law,

8. exposes a person who is to be protected under international

humanitarian law to the risk of death or of serious injury to health

(a) by carrying out experiments on such a person, being a person who has not previously given his or her voluntary and express consent, or where the experiments concerned are neither medically necessary nor carried out in his or her interest,

(b) by taking body tissue or organs from such a person for transplantation purposes so far as it does not constitute removal of blood or skin for therapeutic purposes in conformity with generally recognised medical principles and the person concerned has previously not given his or her voluntary and express consent, or

(c) by using treatment methods that are not medically recognised on such person, without this being necessary from a medical point of view and without the person concerned having previously given his or her voluntary and express consent,

9. treats a person who is to be protected under international humanitarian law in a gravely humiliating or degrading manner

shall be punished, in the cases referred to under number 1, with imprisonment for life, in the cases referred to under number 2, with imprisonment for not less than five years, in the cases referred to under numbers 3 to 5, with imprisonment for not less than three years, in the cases referred to under numbers 6 to 8, with imprisonment for not less than two years, and, in the cases referred to under number 9, with imprisonment for not less than one year.

(2) Whoever in connection with an international armed conflict or with an armed conflict not of an international



character, wounds a member of the adverse armed forces or a combatant of the adverse party after the latter has surrendered unconditionally or is otherwise placed hors de combat shall be punished with imprisonment for not less than three years.

(3) Whoever in connection with an international armed conflict

1. unlawfully holds as a prisoner or unjustifiably delays the return home of a protected person within the meaning of subsection (6), number 1,

2. transfers, as a member of an Occupying Power, parts of its own civilian population into the occupied territory,

3. compels a protected person within the meaning of subsection (6), number 1, by force or threat of appreciable harm to serve in the forces of a hostile Power or

4. compels a national of the adverse party by force or threat of appreciable harm to take part in the operations of war directed against his or her own country

shall be punished with imprisonment for not less than two years.

(4) Where the perpetrator causes the death of the victim through an offence pursuant to subsection (1), numbers 2 to 6, the punishment shall, in the cases referred to under subsection (1), number 2, be imprisonment for life or imprisonment for not less than ten years, in the cases referred to under subsection (1), numbers 3 to 5, imprisonment for not less than five years, and, in the cases referred to under subsection (1), number 6, imprisonment for not less than three years. Where an act referred to under subsection (1), number 8, causes death or

serious harm to health, the punishment shall be imprisonment for not less than three years.

(5) In less serious cases referred to under subsection (1), number 2, the punishment shall be imprisonment for not less than two years, in less serious cases referred to under subsection (1), numbers 3 and 4, and under subsection (2) the punishment shall be imprisonment for not less than one year, in less serious cases referred to under subsection (1), number 6, and under subsection (3), number 1, the punishment shall be imprisonment from six months to five years.

(6) Persons who are to be protected under international humanitarian law shall be

1. in an international armed conflict: persons protected for the purposes of the Geneva Conventions and of the Protocol Additional to the Geneva Conventions (Protocol I) (annexed to this Act), namely the wounded, the sick, the shipwrecked, prisoners of war and civilians;

2. in an armed conflict not of an international character: the wounded, the sick, the shipwrecked as well as persons taking no active part in the hostilities who are in the power of the adverse party;

3. in an international armed conflict and in an armed conflict not of an international character: members of armed forces and combatants of the adverse party, both of whom have laid down their arms or have no other means of defence.

Section 9

War crimes against property and other rights



(1) Whoever in connection with an international armed conflict or with an armed conflict not of an international character pillages or, unless this is imperatively demanded by the necessities of the armed conflict, otherwise extensively destroys, appropriates or seizes property of the adverse party contrary to international law, such property being in the power of the perpetrator's party, shall be punished with imprisonment from one to ten years.

(2) Whoever in connection with an international armed conflict and contrary to international law declares the rights and actions of all, or of a substantial proportion of, the nationals of the hostile party abolished, suspended or inadmissible in a court of law shall be punished with imprisonment from one to ten years.

Section 10

War crimes against humanitarian operations and emblems

(1) Whoever in connection with an international armed conflict or with an armed conflict not of an international character

1. directs an attack against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under international humanitarian law, or

2. directs an attack against personnel, buildings, material, medical units and transport, using the distinctive emblems of the Geneva Conventions in conformity with international humanitarian law

shall be punished with imprisonment for not less than three years. In less serious cases, particularly where the attack does not take place by military means, the punishment shall be imprisonment for not less than one year.

(2) Whoever in connection with an international armed conflict or with an armed conflict not of an international character makes improper use of the distinctive emblems of the Geneva Conventions, of the flag of truce, of the flag or of the military insignia or of the uniform of the enemy or of the United Nations, thereby causing a person's death or serious personal injury (section 226 of the Criminal Code) shall be punished with imprisonment for not less than five years.

Section 11

War crimes consisting in the use of prohibited methods of warfare

(1) Whoever in connection with an international armed conflict or with an armed conflict not of an international character

1. directs an attack by military means against the civilian population as such or against individual civilians not taking direct part in hostilities,

2. directs an attack by military means against civilian objects, so long as these objects are protected as such by international humanitarian law, namely buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, or against undefended towns, villages, dwellings or buildings, or against demilitarised zones, or against works and installations containing dangerous forces,



3. carries out an attack by military means and definitely anticipates that the attack will cause death or injury to civilians or damage to civilian objects on a scale out of proportion to the concrete and direct overall military advantage anticipated,

4. uses a person who is to be protected under international humanitarian law as a shield to restrain a hostile party from undertaking operations of war against certain targets,

5. uses starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival or impedes relief supplies in contravention of international humanitarian law,

6. orders or threatens, as a commander, that no quarter will be given, or

7. treacherously kills or wounds a member of the hostile armed forces or a combatant of the adverse party

shall be punished with imprisonment for not less than three years. In less serious cases under number 2 the punishment shall be imprisonment for not less than one year.

(2) Where the perpetrator causes the death or serious injury of a civilian (section 226 of the Criminal Code) or of a person who is to be protected under international humanitarian law through an offence pursuant to subsection (1), numbers 1 to 6, he shall be punished with imprisonment for not less than five years. Where the perpetrator intentionally causes death, the punishment shall be imprisonment for life or for not less than ten years.

(3) Whoever in connection with an international armed conflict carries out an attack by military means and

definitely anticipates that the attack will cause widespread, long-term and severe damage to the natural environment on a scale out of proportion to the concrete and direct overall military advantage anticipated shall be punished with imprisonment for not less than three years.

Section 12

War crimes consisting in employment of prohibited means of warfare

(1) Whoever in connection with an international armed conflict or with an armed conflict not of an international character

1. employs poison or poisoned weapons,

2. employs biological or chemical weapons or

3. employs bullets which expand or flatten easily in the human body, in particular bullets with a hard envelope which does not entirely cover the core or is pierced with incisions

shall be punished with imprisonment for not less than three years.

(2) Where the perpetrator causes the death or serious injury (section 226 of the Criminal Code) of a civilian or of a person protected under international humanitarian law through an offence pursuant to subsection (1), he shall be punished with imprisonment for not less than five years. Where the perpetrator intentionally causes death, the punishment shall be imprisonment for life or for not less than ten years.

Chapter 3

Other crimes



Section 13

Violation of the duty of supervision

(1) A military commander who intentionally or negligently omits properly to supervise a subordinate under his or her command or under his or her effective control shall be punished for violation of the duty of supervision if the subordinate commits an offence pursuant to this Act, where the imminent commission of such an offence was discernible to the commander and he or she could have prevented it.

(2) A civilian superior who intentionally or negligently omits properly to supervise a subordinate under his or her authority or under his or her effective control shall be punished for violation of the duty of supervision if the subordinate commits an offence pursuant to this Act, where the imminent commission of such an offence was discernible to the superior without more and he or she could have prevented it.

(3) Section 4 subsection (2) shall apply mutatis mutandis.

(4) Intentional violation of the duty of supervision shall be punished with imprisonment for not more than five years, and negligent violation of the duty of supervision shall be punished with imprisonment for not more than three years.

Section 14

Omission to report a crime

(1) A military commander or a civilian superior who omits immediately to draw the attention of the agency responsible for the investigation or prosecution of any offence pursuant to this Act, to such an offence committed by a subordinate, shall be punished with imprisonment for not more than five years.

(2) Section 4 subsection (2) shall apply mutatis mutandis.

Prof. Dr. G. Werle
Dr. J. Bung
Humboldt-Universität zu
Berlin

LEGAL TEXTS
INTERNATIONAL CRIMINAL JUSTICE
SOMMERSEMESTER 2010

