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0521824745 - Prosecuting International Crimes: Selectivity and the International Criminal Law Regime

Robert Cryer

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Prosecuting International Crimes

This book discusses the legitimacy of the international criminal law regime. It explains the development of the system of international criminal law enforcement in historical context, from antiquity through the Nuremberg and Tokyo Trials, to today's prosecutions of atrocities in the former Yugoslavia, Rwanda and Sierra Leone. The modern regime of prosecution of international crimes is evaluated with regard to international relations theory. The book then subjects that regime to a critique on the basis of legitimacy and the rule of law, in particular selective enforcement, not only in relation to who is prosecuted, but also to the definitions of crimes and principles of liability used when people are prosecuted. It concludes that although selective enforcement is not as powerful as a critique of international criminal law as it was previously, the creation of the International Criminal Court may also have narrowed the substantive rules of international criminal law.

ROBERT CRYER is Senior Lecturer in Law at the University of Nottingham. He is the book review editor of the *Journal of Conflict and Security Law*. He teaches international law, criminal law, theory of criminal law, theory of international law, humanitarian law, international criminal law and the law of collective security. He has taught in the United Kingdom, Germany, Austria, Malaysia and South Africa.

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Robert Cryer

Frontmatter

[More information](#)

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Robert Cryer
Frontmatter
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Cambridge University Press

0521824745 - Prosecuting International Crimes: Selectivity and the International
Criminal Law Regime

Robert Cryer

Frontmatter

[More information](#)

To my parents

Contents

	<i>Preface and acknowledgements</i>	page xi
	<i>Table of cases</i>	xiii
	<i>Table of treaties</i>	xxi
	<i>List of abbreviations</i>	xxiv
	Introduction	1
	Part I The development of the international criminal law regime	
1	The development of international criminal law	9
	Introduction	9
	Antiquity	11
	The Middle Ages	13
	The end of the age of chivalry and the ‘classical’ period of the law of nations	21
	1700–1914	25
	The First World War	31
	The Second World War	36
	The Cold War	48
	The International Criminal Tribunal for the Former Yugoslavia (ICTY)	51
	The International Criminal Tribunal for Rwanda (ICTR)	54
	The International Criminal Court (ICC)	57
	Other developments in the post-Cold War era	60
	Conclusion	72

Cambridge University Press

0521824745 - Prosecuting International Crimes: Selectivity and the International Criminal Law Regime

Robert Cryer

Frontmatter

[More information](#)

viii CONTENTS

2	International criminal law: State rights, responsibilities and problems	73
	Introduction	73
	Jurisdiction	75
	Duties to extradite or prosecute?	101
	Incorporation into domestic law and harmonisation	117
	Conclusion	122
3	International Criminal Tribunals and the regime of international criminal law enforcement	124
	Two special cases: Rwanda and former Yugoslavia	127
	The Rome regime	142
	Incorporation and harmonisation of international criminal law	167
	Conclusion	184
Part II Evaluating the regime		
4	Selectivity in international criminal law	191
	What selective enforcement involves	191
	Selectivity in international criminal law	202
	Conclusion	230
5	Selectivity and the law: I – definitions of crimes	232
	Introduction	232
	‘Safe’ and ‘unsafe’ Tribunals	233
	Custom, codification, legitimacy and the <i>nullum crimen sine lege</i> principle	238
	Aggression	241
	Genocide	245
	Crimes against humanity	247
	War crimes	262
	Other crimes	285
	Conclusion	286
6	Selectivity and the law: II – general principles of liability and defences	289
	Introduction	289
	Defences	291

Cambridge University Press
0521824745 - Prosecuting International Crimes: Selectivity and the International
Criminal Law Regime
Robert Cryer
Frontmatter
[More information](#)

CONTENTS ix

Principles of liability	308
Conclusion	325
Conclusion	327
<i>Select bibliography</i>	331
<i>Index</i>	347

Cambridge University Press

0521824745 - Prosecuting International Crimes: Selectivity and the International Criminal Law Regime

Robert Cryer

Frontmatter

[More information](#)

Preface and acknowledgements

This project is the outcropping of work undertaken at two universities, Nottingham and Manchester: first at Nottingham, as a research student, next at Manchester as a lecturer and, finally, back at Nottingham as an academic. From my early days at Nottingham, I owe a debt of gratitude to my supervisors Nigel D. White and Dino Kritsiotis, and to David Harris and the School of Law for granting me a scholarship to pursue my interest in international criminal law.

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Cambridge University Press

0521824745 - Prosecuting International Crimes: Selectivity and the International Criminal Law Regime

Robert Cryer

Frontmatter

[More information](#)

xii PREFACE AND ACKNOWLEDGEMENTS

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Parts of the section on Sierra Leone in chapter 1 draw upon an article published in the *International and Comparative Law Quarterly* in 2001. An early version of chapter 6, alongside some of the introduction to chapter 5, appeared in the 2001 *Journal of Conflict and Security Law*. I have attempted to keep the book up to date to Easter 2004, but have managed to include some later material where it has been possible.

Cambridge University Press

0521824745 - Prosecuting International Crimes: Selectivity and the International Criminal Law Regime

Robert Cryer

Frontmatter

[More information](#)

Cases

- Abbaye Ardenne Case 4 LRTWC 97 317
- Al-Adsani v. United Kingdom Application no 35763/77 105 ILR 24
113–14
- Attorney-General of Israel v. Adolph Eichmann (1968) 36 ILR 18 50,
77, 78, 85, 89
- Artukovic v. Boyle 140 F. Supp. 245 150
- Banković v. Belgium Application No. 52207/99, Admissibility Decision of
12 December 2001 104
- Bourtese, Decision of 20 November 2001, reprinted in (2000) 3 YBIHL
677 90
- Boudarel, Judgment of the Cour de Cassation 1 April 1993 204
- Carvalho, Decision of 11 January 2001 90
- Case Concerning the Application of the Convention on the Prevention
and Punishment of Genocide (Bosnia-Herzegovina v. Yugoslavia)
Preliminary Objections (1996) ICJ Rep. 616 102–3, 111
- Case Concerning Military and Paramilitary Activities in and Against
Nicaragua (Nicaragua v. USA) Merits (1986) ICJ Rep. 4 266
- Chorzow Factory Case 1 WCR 646 242
- Coleman v. Tennessee (1878) 97 US 509 281
- Commonwealth ex rel Wadsworth v. Shortall (1903) 55 Atl. 952 293
- Cvjetković, Oberste Gerichtshof 13 July 1994, Landsgericht Salzburg,
31 May 1995 92, 101
- D. A. v. Osman Conseil de Guerre de Bruxelles, arrêt du 21 Décembre
1994, Cour Militaire, ch. perm.néerl; arrêt du 24 Mai 1995 204
- Demjanjuk v. Petrovsky 776 F. 2d 571 (USCA 6th Circuit 1985);
cert. den. 475 US 1016 (1986), 628 F. Supp. 1370; 784 F. 2d 1254
(1986) 85, 88, 150

Cambridge University Press

0521824745 - Prosecuting International Crimes: Selectivity and the International Criminal Law Regime

Robert Cryer

Frontmatter

[More information](#)

xiv TABLE OF CASES

- Difference Relating to Immunity From Legal Process of a Special Rapporteur of the Commission on Human Rights (1999) ICJ Rep. 62 293
- Džajić No. 20/96. Supreme Court of Bavaria, 3d Strafsenat, 23 May 1997 92
- Dover Castle (1922) 16 AJIL 704 85, 293
- Dow v. Johnson 100 US 158. 29
- DPP v. Polyukhovic (1991) 91 ILR 1 169, 249
- Fédération Nationale des Déportés et Internes Résistants et Patriotes v. Barbie (1985) 78 ILR 125 50, 85, 122, 202
- Ford v. Surget (1878) 97 US 605 28
- Garay Herмосilla et al., Case No. 10.843,1996 Report of the Inter-American Commission on Human Rights 156 104
- Gowaza Trial (London, William Hodge, 1948) 296
- Guatemalan Generals, Tribunal Supremo, Sala de lo Penal, Recurso de casación 803/2001,25 February 2003 90, 98–9
- Hirota v. MacArthur 335 US 876; 93 L. Ed. 1903 44
- In re Albrecht (1947) 14 AD 196 169
- In re Burghoff 16 AD 55 200
- In re Gabrez Military Tribunal, Division 1, Lausanne, 18 April 1997 101
- In re Kahrs (1948) 15 ILR 972 150
- In re Rauter, 14 LRTWC 89 85
- In re The Republic of Macedonia: Decision on the Prosecutor's Request for Deferral and Motion for Order to the Former Yugoslav Republic of Macedonia, IT-02055-Misc.6, 4 October 2002 209, 219
- In re Zuehlke, 14 LRTWC 139 294
- In the Matter of the Surrender of Elizaphan Ntakirutimana 1997 LEXIS 20714 (S.D. Tex., Laredo Div. December 17 1997) 141
- Irma Reyes et al., Cases 11,228,1996 Report of the Inter-American Commission on Human Rights 196 104
- Island of Palmas Case (1928) 2 RIAA 829, 838 75
- Jorgić, OLG Dusseldorf, 26 September 1997 92
- Krauch and Others I. G. Farben, 8 TWC 1080 304
- Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories Opinion, 2004, ICJ List No. 131 274
- Legality of the Threat or Use of Nuclear Weapons Opinion 1996 ICJ Rep. 4 107, 272, 280
- Llandovery Castle (1922) 16 AJIL 709 85, 293
- Metheram [1961] 3 All ER 200 262

Cambridge University Press

0521824745 - Prosecuting International Crimes: Selectivity and the International Criminal Law Regime

Robert Cryer

Frontmatter

[More information](#)

TABLE OF CASES XV

- Montt, Audlenca National, 13 December 2000, English translation in (2000) 3YBIHL 691 89
- Military Prosecutor v. Niyontenze, Tribunal Militaire Division 2, Lausanne, 30 April 1999, Tribunal Militaire d'Appel, IA Geneva, 26 May 2000 93, 170
- Ntakirutimana v. Reno (184 F. 3d 419, US Court of Appeals, 5th Circuit) 141, 150
- Nuclear Weapons Opinion *see* Legality of the Threat Case
- Nulyarimma v. Thompson (1999) 165 ALR 621 119
- Nuremberg IMT, Judgment and Sentence (1947) 41 AJIL 172 1–2, 16, 30, 39, 40, 48, 118, 205, 241–3, 285, 295, 302, 310, 317
- Papon, Judgment of Chambre d'Accusation de la Cour d'Appel de Bordeaux, 18 September 1996 204
- Pinochet Case 19/97, November 4 1998, Case 1/980 November 5 1998, reprinted in (1999) 2 YBIHL 505 89
- Priebke Rome Military Court of Appeal 7 March 1998 297
- Prosecutor v. Akayesu, Judgment, ICTR-96-4-T, 2 September 1998 170, 179, 314
- Prosecutor v. Akayesu, Judgment, ICTR-96-4-A, 1 June 2001 16, 252–3
- Prosecutor v. Aleksovski, Judgment, IT-95-14/1-T, 25 June 1999 169, 177, 264
- Prosecutor v. Aleksovski, Judgment, IT-95-14/1-A, 24 March 2000 177, 220, 303, 317
- Prosecutor v. Bagilishema Judgment, ICTR-95-1A-T, 7 June 2001 179
- Prosecutor v. Bagilishema, Judgment, ICTR-95-1A-A, 3 July 2002 179, 322
- Prosecutor v. Bagosora, Decision of the Trial Chamber on the Application by the Prosecutor for a Formal Request for Deferral by the Kingdom of Belgium and in the matter of Theoneste Bagosora, ICTR-96-7-D, 17 May 1996 131
- Prosecutor v. Barayagwiza, Decision, ICTR-97-19-AR72, 19 November 1999 142
- Prosecutor v. Barayagwiza, Decision (Prosecutor's Request for Review or Reconsideration) ICTR-97-19-AR72, 31 March 2000 142
- Prosecutor v. Blaškić, Decision of the President on the Defence Motion Filed Pursuant to Rule 64, IT-95-14-T, 2 April 1996 132
- Prosecutor v. Blaškić, Decision on the Request of the Republic of Croatia for Review of the Decision of Trial Chamber II of 18 July 1997, IT-95-14-AR108bis, 29 October 1997 133, 134, 135, 136

Cambridge University Press

0521824745 - Prosecuting International Crimes: Selectivity and the International Criminal Law Regime

Robert Cryer

Frontmatter

[More information](#)

xvi TABLE OF CASES

- Prosecutor v. Blaškić, Decision of Trial Chamber I on Protective Measures for General Phillipe Morillon, Witness of the Trial Chamber, IT-95-14-T, 12 May 1999 140
- Prosecutor v. Blaškić, Judgment, IT-95-14-T, 2 March 2000 276, 314, 317, 318, 319, 321, 322
- Prosecutor v. Blaškić, Judgment, IT-95-14-A, 29 July 2004 140, 277, 322–3
- Prosecutor v. Brđjanin and Talić, Decision on Interlocutory Appeal, IT-99-36-AR73.9,11 December 2002 135
- Prosecutor v. Brima, Kamara and Kanu, Written Reasons for the Trial Chamber's Oral Decision on the Defence Motion on Abuse of Process due to Infringement of Principles of Nullum Crimen Sine Lege and Non-Retroactivity as to Several Counts, SCSL-04-16-PT, 31 March 2004 170
- Prosecutor v. Delalić, Delić, Mucić and Landžo, Judgment, IT-96-21-T, 16 November 1998 169, 176, 177, 216, 256, 290, 302, 311, 317, 318, 319, 321, 324
- Prosecutor v. Delalić, Delić, Mucić and Landžo, Judgment, IT-96-21-A, 20 February 2001 176, 177, 193, 194, 213, 318, 321, 322, 323, 324
- Prosecutor v. Djajić, Supreme Court of Bavaria *See* Djajić, 23 May 1997
- Prosecutor v. Erdemović, Judgment, IT-96-22-A, 29 November 1997 298, 302–3
- Prosecutor v. Fofana, Decision on Preliminary Motion on Lack of Jurisdiction *Materiae*: Illegal Delegation of Powers by the United Nations, SCSL-2004-14-AR72(E), 25 May 2004 65
- Prosecutor v. Fofana, Decision on Preliminary Motion on Lack of Jurisdiction *Materiae*: Nature of the Armed Conflict, SCSL-2004-14-AR72(E), 25 May 2004 63, 180
- Prosecutor v. Furundžija, Judgment, IT-95-17/1-T, 10 December 1998 81, 86, 111, 113, 174, 177, 258, 311
- Prosecutor v. Galić, Judgment, IT-98-29-T, 5 December 2003 217, 278
- Prosecutor v. Gbao, Decision on Appeal by the Truth and Reconciliation Commission ('TRC') and accused against the decision of Judge Bankole Thompson on 3 November 2003 to deny the TRC's request to hold a public hearing with Augustine Gbao, SCSL-2004-15-PT109, 7 May 2004 65
- Prosecutor v. Hadžihasanović, Alagić and Kubura, Decision on Interlocutory Appeal in Relation to Command Responsibility, IT-01-47-AR72,16 July 2003 175, 177–8, 319, 323

Cambridge University Press

0521824745 - Prosecuting International Crimes: Selectivity and the International Criminal Law Regime

Robert Cryer

Frontmatter

[More information](#)

TABLE OF CASES xvii

- Prosecutor v. Hadžihasanović, Alagić and Kubura, Decision on Joint Challenge to Jurisdiction, IT-01-47-PT, 12 November 2002 256
- Prosecutor v. Jelisić, Judgment, IT-95-10-T, 14 December 1999 246
- Prosecutor v. Kallon and Kamara, Decision on Challenge to Jurisdiction: Lomé Accord Amnesty, SCSL-2004-15-AR72(E) and SCSL 2004-16-AR72(E), 13 March 2004 65, 93, 109
- Prosecutor v. Kanyabashi, Decision on the Defence Motion on Jurisdiction ICTR-96-15-T, 18 June 1997 56, 133
- Prosecutor v. Karemera, Decision, ICTR-98-44-T, 25 April 2001 56
- Prosecutor v. Kayishema and Ruzindana, Judgment, ICTR-95-1-T, 21 May 1999 179, 260, 317, 324
- Prosecutor v. Kayishema and Ruzindana, Judgment, ICTR-95-1-A, 1 June 2001 247
- Prosecutor v. Kordić and Čerkez, Judgment, IT-95-14/2-T, 26 February 2001 177, 276, 307, 314
- Prosecutor v. Krnojelac, Judgment, IT-97-25-T, 15 March 2002 324
- Prosecutor v. Krsmanović & Djukić, Order for Provisional Detention, IT-96-20 135
- Prosecutor v. Krstić, Judgment, IT-98-33-T, 2 August 2001 246, 256
- Prosecutor v. Krstić, Judgment, IT-98-33-A, 19 April 2004 120, 240, 312
- Prosecutor v. Kunarac, Kovać and Vuković, Judgment, IT-96-23-T, 22 February 2001 257, 258
- Prosecutor v. Kunarac, Kovać and Vuković, Judgment, IT-96-23-A, 12 June 2002 254, 257
- Prosecutor v. Kupreškić, Kupreškić, Josipović, Papić and Santić, Judgment, IT-95-16-T, 14 January 2000 177, 199, 217, 255, 260, 283, 308
- Prosecutor v. Kvočka, Judgment, IT-98-30-1/T, 2 November 2001 259, 323
- Prosecutor v. Lajić, Order for the Withdrawal of Charges Against the Person Named Goran Lajić and for his Release, IT-95-8, 17 June 1996 135
- Prosecutor v. Martić, Decision on Rule 61 Hearing, IT-95-11-R61 276
- Prosecutor v. Milošević, Decision on Preliminary Motions, IT-99-37, 8 November 2001 19, 211, 213, 214
- Prosecutor v. Mrksić, Radić, Sljivancanin and Dokmanović, Decision on the Motion for Release by the Accused Slavko Dokmanović, IT-95-13a-PT, 22 October 1997 133, 138

Cambridge University Press

0521824745 - Prosecuting International Crimes: Selectivity and the International Criminal Law Regime

Robert Cryer

Frontmatter

[More information](#)

xviii TABLE OF CASES

- Prosecutor v. Multinović, Ojdanić and Šainović, Decision on Motion Challenging Jurisdiction, IT-99-37-PT, 6 May 2003 209
- Prosecutor v. Multinović, Šainović and Ojdanić, Decision on Ojdanić's Motion Challenging Jurisdiction – Joint Criminal Enterprise, IT-99-37-AR72, 21 May 2003 312
- Prosecutor v. Multinović, Šainović and Ojdanić, Reasons for Decision Dismissing the Interlocutory Appeal Concerning Jurisdiction Over the Territory of Kosovo, IT-99-37-AR72.2, 8 June 2004 209
- Prosecutor v. Musema, Decision of the Trial Chamber in the Application by the Prosecutor for a Formal Request for Deferral by Switzerland in the Matter of Alfred Musema, ICTR-96-5-D, 12 March 1996 131
- Prosecutor v. Musema, Judgment, ICTR-96-13-T, 27 January 2000 179, 324
- Prosecutor v. Nahimana, Barayagwiza and Ngeze, Judgment, ICTR-99-52-T, 3 December 2003 210, 315
- Prosecutor v. Nikolić, Decision on Defence Motion Challenging the Exercise of Jurisdiction by the Tribunal, IT-94-2-PT, 9 October 2002 138
- Prosecutor v. Nikolić, Decision on Interlocutory Appeal Concerning Legality of Arrest, IT-94-2-AR73, 5 June 2003 138–9
- Prosecutor v. Norman, Decision on Preliminary Motion Based on Lack of Jurisdiction (Child Recruitment) SCSL-2004-14-AR72, 31 May 2004 275, 284
- Prosecutor v. Ntuyuhaga, Decision on the Prosecutor's Motion to Withdraw the Indictment ICTR-96-40-T, 18 March 1999 94, 128, 129
- Prosecutor v. Rutaganda, Judgment, ICTR-96-3-T, 6 December 1999 179
- Prosecutor v. Semanza, Judgment, ICTR-97-20-T, 15 May 2003 179, 252
- Prosecutor v. Sesay, Kallon and Gbao, Decision on the Disqualification of Justice Robertson from the Appeals Chamber, SCSL-2004-15-AR15, 13 March 2004 65
- Prosecutor v. Simić, Tadić and Zarić, Decision on the Prosecution Motion under Rule 73 for a Ruling Concerning the Testimony of a Witness, IT-95-9-PT, 27 July 1999 135
- Prosecutor v. Simić, Tadić and Zarić, Judgment, IT-95-9-T, 17 October 2003 312

Cambridge University Press

0521824745 - Prosecuting International Crimes: Selectivity and the International Criminal Law Regime

Robert Cryer

Frontmatter

[More information](#)TABLE OF CASES xix

- Prosecutor v Simić, Tadić, Zarić and Todorović, Decision Stating Reasons for Trial Chamber's Order of 4 March 1999 on Defence Motion for Evidentiary Hearing on the Arrest of the Accused Todorovic, IT-95-9, 4 March 1999 138
- Prosecutor v. Simić, Tadić, Zarić and Todorović, Decision on Appeal by Stevan Todorović Against the Oral Decision of 4 March 1999 and Written Decision of 25 March 1999 of Trial Chamber III, IT-95-9-A, 19 October 1999 138
- Prosecutor v. Simić, Tadić, Zarić and Todorović, Decision, IT-95-9-T, 23 November 2003 138
- Prosecutor v. Stakić, Judgment, IT-97-24-T, 31 July 2003 246, 256
- Prosecutor v. Strugar, Decision, IT-01-42, 22 November 2002 277
- Prosecutor v. Tadić, Decision on the Request of the Prosecutor for a Formal Request for Deferral, IT-94-T, 8 November 1994 127, 130
- Prosecutor v. Tadić, Decision on Prosecution Motion for Protective Measures for Witnesses, IT-94-1-T, 10 August 1995 135, 264
- Prosecutor v. Tadić, Decision on Interlocutory Appeal on Jurisdiction, IT-94-1-AR72, 2 October 1995 19, 53–4, 94, 127, 169, 262, 263, 264, 265, 266, 281, 282
- Prosecutor v. Tadić, Decision on the Defence Motion on the Principle of Non Bis in Idem IT-94-1-T, 14 November 1995 131
- Prosecutor v. Tadić, Opinion and Judgment, IT-94-1-T, 7 May 1997 38, 83, 139, 249, 251, 252, 254–5, 259, 260, 311
- Prosecutor v. Tadić, Judgment, IT-94-1-A, 15 July 1999 20, 130, 174, 251, 252, 311, 312, 315, 316
- Prosecutor v. Taylor, Decision on Immunity, SCSL-2003-01-I, 31 May 2004 62, 65, 74
- Prosecutor v. Todorović *See* Prosecutor v. Simić *et al.*
- Prosecutor v. Vasiljević, Judgment, IT-98-32-T, 28 November 2002 239, 260
- Prosecutor v. Vasiljević, Judgment, IT-98-32-A, 24 March 2004 312
- Quinn v. Robinson 783 2 F. 2d 776, 779 150
- R v. Bow Street Stipendiary Magistrate, ex parte Pinochet Ugarte [1998] 4 All ER 897 108
- R v. Bow Street Stipendiary Magistrate, ex parte Pinochet Ugarte [No. 2] [1999] All ER 577 70
- R v. Bow Street Stipendiary Magistrate, ex parte Pinochet Ugarte [No. 3] Amnesty International Intervening [1999] 2 All ER 97 81, 86, 97, 110, 119
- R v. Finta 104 ILR 285 60, 120, 249

Cambridge University Press

0521824745 - Prosecuting International Crimes: Selectivity and the International Criminal Law Regime

Robert Cryer

Frontmatter

[More information](#)

XX TABLE OF CASES

- R v. Sawoniuk (2001) 2 Cr App R. 220 60
- R v. Smith (1900) 17 SCR 561 293
- Reservations to the Convention on the Prevention and Punishment of Genocide Opinion (1951) ICJ Rep. 15 103, 111, 113, 246
- Riggs v. State (1866) 43 Tenn. 85 293
- Rohrig, Brunner and Heinze (1950) 17 ILR 393 77, 78
- Sharon, Chambre de Mises en Accusation of Brussels, 26 June 2002, Court of Cassation, 12 February 2003 90
- SS Lotus (France v. Turkey) (1927) PCIJ Rep. Series A, No. 10, p. 19. 78, 82, 88
- Stanislaus Kroftan v. Public Prosecutor (1967) 1 Malaysian LJ 133 118
- State v. Schulmann (1970) 39 ILR 433 150
- Tokyo IMT Judgment, Transcript, also in B. V. A. Röling and C. F. Rüter, *The Tokyo Judgment* (Amsterdam, Amsterdam University Press, 1977) 42, 44, 45, 46, 206–8, 242–3, 249, 310, 317
- Touvier, Judgment of 20 December 1985 Cass. Crim. 1986 J.C.P. II G No 20,655. 50, 122
- US v. Brandt 2 TWC 171 258
- US v. Calley (1969) 41 CMR 96; (1973) 46 CMR 1131; (1973) 48 CMR 19; (1973) 22 USCMA 534 50, 76, 118, 204–5, 297
- US v. Kindler (1953) 14 CMR 742 297
- US v. Masuda (The Jaluit Atoll Case) 1 LRTWC 71 296
- US v. Medina (1971) 43 CMR 243, (1973) 22 USCMA 534 50, 76, 290, 291
- US v. Ohlendorf (The Einsatzgruppen Trial) 4 TWC 411 296
- US v. Sawada 5 LRTWC 1 296
- US v. von Leeb (The High Command Trial) 11 TWC 1 18, 201, 296
- US v. von List (The Hostages Trial) 8 LRTWC 32 201
- US v. Yamashita 327 US 1,4 LRTWC 1 36, 290, 291
- Velasquez-Rodriguez v. Honduras, Inter-American Court of Human Rights, Judgment of July 29,1988 (1989) 28 ILM 29 104
- von Falkenhorst 11 LRTWC 18 314
- Yerodia Case, Case Concerning the Arrest Warrant of 11 April 2000 (Democratic Republic of Congo v. Belgium) ICJ General List 121 74, 79, 81, 83, 85, 86, 87–8, 95, 96, 98, 103, 108, 114–16, 205, 328

Cambridge University Press

0521824745 - Prosecuting International Crimes: Selectivity and the International Criminal Law Regime

Robert Cryer

Frontmatter

[More information](#)

Treaties

- 1864 Convention for the Amelioration of the Condition of Wounded in Armies in the Field 1 Bevans 7 30
- 1868 St Petersburg Declaration Renouncing, in Time of War, The Use of Explosive Projectiles Under 400 Grammes in Weight 58 BFSP (1867–1868) 16 26, 265, 280
- 1899 Hague Declaration 3 Concerning Expanding Bullets 32 UKTS (1907) Cd. 3751 30, 270
- 1907 Hague Convention X for the Adaptation to Maritime Warfare the Principles of the Geneva Convention 30
- 1907 Hague Rules, Annex to Hague Convention IV, Respecting the Laws and Customs of War on Land 9 UKTS (1910) Cd.5030 30, 248, 265, 270, 276, 280
- 1919 Treaty of Versailles 112 BFSP 1 (1919) 33–4
- 1920 Treaty of Sèvres TS No. 11 33
- 1923 Treaty of Lausanne 8 LNTS 11 33
- 1925 Geneva Protocol for the Prohibition of the Use in War of Asphyxiating Poisonous or other Gases 44 LNTS 65 279
- 1928 General Treaty for the Renunciation of War as an Instrument of National Policy (1929) UKTS 29 Cmnd. 3410 242
- 1929 Geneva Convention Relative to the Treatment of Prisoners of War 30
- 1937 Convention for the Creation of an International Criminal Court (1938) League of Nations Official Journal Special Supp. 156 36
- 1945 Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis Powers and Charter of the International Military Tribunal 82 UNTS 279 37, 38, 39, 40, 48, 168, 241, 246, 263, 285, 292, 294–5, 309–10
- 1945 United Nations Charter 53, 54, 56, 128, 132, 133, 228

Cambridge University Press

0521824745 - Prosecuting International Crimes: Selectivity and the International Criminal Law Regime

Robert Cryer

Frontmatter

[More information](#)

xxii TABLE OF TREATIES

- 1948 Convention on the Prevention and Punishment of the Crime of Genocide 78 UNTS 277 49, 102–3, 176, 246, 311, 313
- 1949 Geneva Convention I for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field 75 UNTS 31 49, 82, 83, 102, 314
- 1949 Geneva Convention II for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea 75 UNTS 85 49, 82, 102
- 1949 Geneva Convention III Relative to the Treatment of Prisoners of War 75 UNTS 135 49, 79, 82, 102, 271
- 1949 Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War 75 UNTS 287 49, 79, 82, 102, 271, 273, 274
- 1950 European Convention on Human Rights ETS No. 5 239
- 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict 249 UNTS 240 276
- 1955 NATO Status of Forces Agreement 1951 UKTS 3 (1955) Cmnd 9363 154
- 1966 International Covenant on Civil and Political Rights 999 UNTS 171 79, 103–4, 193, 239
- 1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, GA Resolution 2931 754 UNTS 75 259
- 1969 Inter-American Convention on Human Rights PAUTS 36 239
- 1969 Vienna Convention on the Law of Treaties 1155 UNTS 331 145, 155, 171
- 1972 UN Convention on Prohibition of the Development, Production and Stockpiling of Bacteriological, Biological and Toxin Weapons and their Destruction 1015 UNTS 164 280
- 1973 International Convention on the Suppression and Punishment of the Crime of Apartheid 1015 UNTS 245 57, 80, 83–4, 259
- 1977 Protocol I Additional to the Geneva Conventions of 8 August 1949 and Relating to the Protection of Victims in International Armed Conflict 1125 UNTS 3 79, 176, 264, 270, 271, 272, 273, 274, 276, 277, 278, 279, 318–19, 321, 322
- 1977 Protocol II Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of Non-International Armed Conflicts 1125 UNTS 609 266, 275, 281–2, 284
- 1982 United Nations Convention on the Law of the Sea 1833 UNTS 3 3, 86

Cambridge University Press

0521824745 - Prosecuting International Crimes: Selectivity and the International Criminal Law Regime

Robert Cryer

Frontmatter

[More information](#)

TABLE OF TREATIES xxiii

- 1984 Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment and Punishment 1465 UNTS 85 80, 86, 103, 256
- 1988 Vienna Convention Against the Illicit Trafficking in Narcotic Drugs and Psychotropic Substances 1019 UNTS 175 3, 57
- 1993 Statute of the International Criminal Tribunal for Former Yugoslavia, annex to Security Council Resolution 827 127, 128, 129, 130, 131, 132, 136, 169, 191, 194, 209, 244, 246, 250, 264–6, 298, 311–12, 319
- 1994 Inter-American Convention on the Forced Disappearance of Persons 9 June 1994 (1994) 33 ILM 1529 258
- 1994 Statute of the International Criminal Tribunal for Rwanda, Annex to Security Council Resolution 955 127, 128, 129, 130, 131–2, 136, 141, 170, 191, 194, 209–10, 244, 246, 250, 266–7, 298, 311, 319
- 1995 Convention on the Safety of United Nations and Associated Personnel, GA Resolution 49/59 UN Doc. A/RES/49/59 272
- 1995 Dayton Peace Agreement (1996) 35 ILM 75 138
- 1997 International Convention on Terrorist Bombings (GA Resolution 52/164, UN Doc. A/RES/52/164) 286, 315
- 1998 Rome Statute of the International Criminal Court A/Conf.183/9 5, 34, 59, 74–5, 79, 143–67, 171–87, 193, 194, 195, 198, 222–7, 244–5, 253–60, 268–83, 299–308, 312–16, 320–5
- 2001 Agreement Between the United Nations and Sierra Leone on the Establishment of a Special Court 62
- 2001 Statute of the Special Court for Sierra Leone 62–4, 170, 179, 229–30, 261, 284, 301, 316, 325
- 2003 Draft Agreement Between the UN and the Royal Government of Cambodia Concerning the Prosecution Under Cambodian Law of Crimes Committed During the Period of Democratic Kampuchea 67–8, 237

Cambridge University Press

0521824745 - Prosecuting International Crimes: Selectivity and the International Criminal Law Regime

Robert Cryer

Frontmatter

[More information](#)

Abbreviations

AD	<i>Annual Digest of Public International Law Cases</i>
AJCL	<i>American Journal of Comparative Law</i>
AJIL	<i>American Journal of International Law</i>
Alb LR	<i>Albany Law Review</i>
All ER	<i>All England Reports</i>
AP	Additional Protocol
Arizona JICL	<i>Arizona Journal of International and Comparative Law</i>
ASIL	American Society of International Law
ASP	Assembly of States Parties
AUJILP	<i>American University Journal of International Law and Politics</i>
BCE	Before Common Era
BFSP	<i>British Foreign and State Papers</i>
BUIJLJ	<i>Boston University International Law Journal</i>
BYBIL	<i>British Yearbook of International Law</i>
Cal LR	<i>California Law Review</i>
CWRJIL	<i>Case Western Reserve Journal of International Law</i>
CE	Common Era
CLF	Criminal Law Forum
CLJ	<i>Cambridge Law Journal</i>
CLP	<i>Current Legal Problems</i>
CMR	<i>Court Martial Reports</i>
Columbia JTL	<i>Columbia Journal of Transnational Law</i>
Columbia LR	<i>Columbia Law Review</i>
Connecticut JIL	<i>Connecticut Journal of International Law</i>
Cornell ILJ	<i>Cornell International Law Journal</i>
Cr App R	<i>Criminal Appeal Reports</i>

Cambridge University Press

0521824745 - Prosecuting International Crimes: Selectivity and the International Criminal Law Regime

Robert Cryer

Frontmatter

[More information](#)

LIST OF ABBREVIATIONS xxv

Crim LR	<i>Criminal Law Review</i>
CSCE	Conference on Security and Cooperation in Europe
CWILJ	<i>California Western International Law Journal</i>
CWRILJ	<i>Case Western Reserve International Journal</i>
CYBIL	<i>Canadian Yearbook of International Law</i>
De Paul LR	<i>De Paul Law Review</i>
Dickinson JIL	<i>Dickinson Journal of International Law</i>
DJCIL	<i>Duke Journal of Comparative and International Law</i>
DJILP	<i>Denver Journal of International Law and Policy</i>
ECHR	European Court of Human Rights
EIA	<i>Ethics and International Affairs</i>
EJCCLCJ	<i>European Journal of Crime, Criminal Law and Criminal Justice</i>
EJIL	<i>European Journal of International Law</i>
Emory ILR	<i>Emory International Law Review</i>
EPIL	Rudolf Bernhardt et al. (eds.), <i>Encyclopaedia of Public International Law</i> (New York: Elsevier, 1995)
FA	<i>Foreign Affairs</i>
FEC	Far Eastern Commission
FFWA	<i>Fletcher Forum of World Affairs</i>
Fordham ILJ	<i>Fordham International Law Journal</i>
FRY	Federal Republic of Yugoslavia
GA	General Assembly
GC	Geneva Convention
GYBIL	<i>German Yearbook of International Law</i>
Harvard HRLJ	<i>Harvard Human Rights Law Journal</i>
Harvard ILJ	<i>Harvard International Law Journal</i>
HRLJ	<i>Human Rights Law Journal</i>
HRLR	<i>Human Rights Law Review</i>
HRQ	<i>Human Rights Quarterly</i>
IA	<i>International Affairs</i>
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Court of Justice
ICLQ	<i>International and Comparative Law Quarterly</i>
ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia

Cambridge University Press

0521824745 - Prosecuting International Crimes: Selectivity and the International Criminal Law Regime

Robert Cryer

Frontmatter

[More information](#)

xxvi LIST OF ABBREVIATIONS

ILA	International Law Association
ILC	International Law Commission
ILM	<i>International Legal Materials</i>
ILQ	<i>International Law Quarterly</i>
ILR	<i>International Law Reports</i>
ILSAJICL	<i>International Law Students' Association Journal of International and Comparative Law</i>
IMT	International Military Tribunal
IP	<i>International Politics</i>
IRRC	<i>International Review of the Red Cross</i>
Israel LR	<i>Israel Law Review</i>
IYBHR	<i>Israel Yearbook on Human Rights</i>
JACL	<i>Journal of Armed Conflict Law</i>
JCSL	<i>Journal of Conflict and Security Law</i>
JHIL	<i>Journal of the History of International Law</i>
JICJ	<i>Journal of International Criminal Justice</i>
KCLJ	<i>King's College Law Journal</i>
L. Ed.	Lawyer's Edition
LCP	<i>Law and Contemporary Problems</i>
LJ	<i>Law Journal</i>
LJIL	<i>Leiden Journal of International Law</i>
LLAICLR	<i>Loyola & Los Angeles International and Comparative Law Review</i>
LNTS	League of Nations Treaty Series
LPICL	<i>Law and Practice of International Courts and Tribunals</i>
LQR	<i>Law Quarterly Review</i>
LR	Law Reports
LRTWC	<i>Law Reports, Trials of War Criminals</i>
LSI	<i>Law and Social Inquiry</i>
Mich LR	<i>Michigan Law Review</i>
Military LR	<i>Military Law Review</i>
MJIL	<i>Michigan Journal of International Law</i>
MLR	<i>Modern Law Review</i>
MPYBUNL	<i>Max Planck Yearbook of United National Law</i>
MULR	<i>Melbourne University Law Review</i>
NELR	<i>New England Law Review</i>
NI	<i>The National Interest</i>
NILR	<i>Netherlands International Law Review</i>
Nordic JIL	<i>Nordic Journal of International Law</i>
NYIL	<i>Netherlands Yearbook of International Law</i>

LIST OF ABBREVIATIONS xxvii

NYLSJICL	<i>New York Law School Journal of International and Comparative Law</i>
NYUJILP	<i>New York University Journal of International Law and Policy</i>
OJLS	<i>Oxford Journal of Legal Studies</i>
OLA	UN Office of Legal Affairs
OLR	<i>Oregon Law Review</i>
OTP	Office of the Prosecutor
Pace ILR	<i>Pace International Law Review</i>
PCIJ	Permanent Court of International Justice
PREP Com	Preparatory Committee for an International Criminal Court/Preparatory Commission
Proc.	Proceedings
Proceedings ASIL	<i>Proceedings of the American Society of International Law</i>
RADIC	<i>African Review of International and Comparative Law</i>
RdC	<i>Receuil des Cours, l'Académie de Droit International</i>
RIA	<i>Reports of International Arbitration Awards</i>
RIDMDG	<i>Révue Internationale de Droit Militaire et Law Droit de la Guerre</i>
RIDP	<i>Révue Internationale de Droit Penal</i>
SALJ	<i>South African Law Journal</i>
SAYBIL	<i>South African Yearbook of International Law</i>
SCSL	Special Court for Sierra Leone
SDJJ	<i>San Diego Justice Journal</i>
SFOR	Stabilisation Force
SFRY	Socialist Federal Republic of Yugoslavia
SOFA	Status of Forces Agreement
TGS	<i>Transactions of the Grotius Society</i>
TILJ	<i>Texas International Law Journal</i>
TLCP	<i>Transnational Law and Contemporary Problems</i>
TLR	<i>Texas Law Review</i>
TS	Treaty Series
Tulane LR	<i>Tulane Law Review</i>
TWC	<i>Trials of War Criminals</i>
UCDJIL	<i>University of California, Davis, Journal of International Law</i>
UKTS	<i>United Kingdom Treaty Series</i>
UNTAET	United Nations Transitional Authority in East Timor

Cambridge University Press
0521824745 - Prosecuting International Crimes: Selectivity and the International
Criminal Law Regime
Robert Cryer
Frontmatter
[More information](#)

xxviii LIST OF ABBREVIATIONS

UNTS	<i>United Nations Treaty Series</i>
UNWCC	<i>United Nations War Crimes Commission</i>
UPLR	<i>University of Pennsylvania Law Review</i>
USCMA	<i>United States Court Marital Appeals</i>
Vil. LR	<i>Villanova Law Review</i>
VJIL	<i>Virginia Journal of International Law</i>
VJTL	<i>Vanderbilt Journal of Transnational Law</i>
WCR	<i>World Court Reports</i>
Yale JIL	<i>Yale Journal of International Law</i>
Yale LJ	<i>Yale Law Journal</i>
YBIHL	<i>Yearbook of International Humanitarian Law</i>
YBILC	<i>Yearbook of the International Law Commission</i>