Volume I of the International Criminal Law Practitioner Library series focuses on the law of individual criminal responsibility applied in international criminal law, providing a thorough review of the forms of criminal responsibility. The authors present a critical analysis of the elements of individual criminal responsibility as set out in the statutory instruments of the international and hybrid criminal courts and tribunals and their jurisprudence. All elements are discussed, demystifying and untangling some of the confusion in the jurisprudence and literature on the forms of responsibility. The jurisprudence of the ICTY and the ICTR is the main focus of the book. Every trial and appeal judgement, as well as relevant interlocutory jurisprudence, up to 1 December 2006, has been surveyed, as has the relevant jurisprudence of other tribunals and the provisions in the legal instruments of the ICC, making this a highly relevant and timely work.

Gideon Boas, a former Senior Legal Officer at the ICTY, is a Senior Lecturer in Law at Monash University Law Faculty and an international law consultant.

James L. Bischoff, a former Associate Legal Officer at the ICTY, is a Law Clerk in the Chambers of the Honourable Juan R. Torruella of the United States Court of Appeals for the First Circuit.

Natalie L. Reid, a former Associate Legal Officer at the ICTY, is an Associate with Debevoise & Plimpton LLP, New York.
FORMS OF RESPONSIBILITY IN INTERNATIONAL CRIMINAL LAW

International Criminal Law Practitioner Library Series

Volume I

GIDEON BOAS
JAMES L. BISCHOFF
NATALIE L. REID

The views expressed in this book are those of the authors alone and do not necessarily reflect the views of the International Criminal Tribunal for the former Yugoslavia or the United Nations in general.
Contents

Foreword                                      page xiii
Table of authorities                        xvii

1 Introduction                               1
   1.1 Forms of responsibility in international criminal law  1
   1.2 Scope of this book and terminology used               4

2 Joint criminal enterprise                  7
   2.1 Origins and development of Joint Criminal Enterprise in the jurisprudence of the ad hoc Tribunals  10
   2.2 Limited application of JCE in the ICTR               28
   2.3 Elements of Joint Criminal Enterprise               33
      2.3.1 Physical elements                               34
         2.3.1.1 The JCE consisted of a plurality of persons: first physical element  35
         2.3.1.2 Common plan, design, or purpose: second physical element  37
         2.3.1.3 The accused participated in the JCE: third physical element  44
      2.3.2 Mental elements                                51
         2.3.2.1 Mental elements of the first category of JCE   51
            2.3.2.1.1 Voluntary participation                  51
            2.3.2.1.2 Shared intent                           52
         2.3.2.2 Mental elements of the second category of JCE  57
            2.3.2.2.1 Personal knowledge                     57
            2.3.2.2.2 Intent to further criminal purpose       59
            2.3.2.2.3 Shared intent for specific-intent crimes  67
         2.3.2.3 Mental elements of the third category of JCE  68
vi

Contents

2.3.2.3.1 Intent to participate and further criminal purpose 68
2.3.2.3.2 Accused’s anticipation of natural and foreseeable commission of charged crime 70

2.4 The 

2.4.1 The 

2.4.2 Warning signs before the 

2.4.3 Precedent considered in the 

2.4.4 Post- 

2.4.5 Assessing the impact of 

2.5 Indirect co-perpetration: a new form of common-purpose liability? 104
2.5.1 The 

2.5.2 The prosecutor’s response to the and 

2.5.3 The March 2006 

2.5.4 The 

2.5.5 The 

2.5.6 Assessing the impact of 

2.6 Joint Criminal Enterprise and its analogues in the International Criminal Court and internationalised tribunals 124
2.6.1 The International Criminal Court 124
2.6.2 The Internationalised Tribunals 128
2.6.2.1 Special Court for Sierra Leone (SCSL) 128
2.6.2.2 East Timor: Special Panels for Serious Crimes (SPSC) 133
2.6.2.3 The Extraordinary Chambers in the Courts of Cambodia (ECCC) 136
2.6.2.4 Supreme Iraqi Criminal Tribunal (SICT), formerly known as the Iraqi Special Tribunal (IST) 137

2.7 Conclusion 140

3 Superior responsibility 142
3.1 Origins and development of the superior responsibility doctrine 145
3.1.1 The roots of the superior responsibility doctrine 145
3.1.2 Developments subsequent to the Second World War 148
3.1.3 Historical evolution of the elements of superior responsibility

3.1.3.1 Historical evolution of the subordinate-superior relationship element

3.1.3.1.1 Post-Second World War cases

3.1.3.1.2 Additional protocols

3.1.3.1.3 Statutes of the ad hoc Tribunals

3.1.3.2 Historical evolution of the mental element

3.1.3.2.1 Post-Second World War cases

3.1.3.2.2 Additional protocols

3.1.3.2.3 The Kahan Report (Israeli Commission of Inquiry)

3.1.3.2.4 The Statutes of the ad hoc Tribunals

3.1.3.2.5 ICC Statute

3.1.3.3 Historical evolution of the ‘necessary and reasonable measures’ element

3.1.3.3.1 Post-Second World War cases: ‘necessary and reasonable measures’

3.1.3.3.2 Post-Second World War cases: duty to prevent as a separate duty?

3.1.3.3.3 Additional protocols

3.2 Elements of superior responsibility

3.2.1 Elements

3.2.1.1 A superior-subordinate relationship existed between the accused and the person for whose criminal conduct he is alleged to be responsible

3.2.1.2 The accused knew or had reason to know that the criminal conduct in question was about to be, was being, or had been realised by one or more subordinates

3.2.1.2.1 Actual knowledge: first alternative mental element

3.2.1.2.2 Constructive knowledge: second alternative mental element

3.2.1.3 The accused failed to take the necessary and reasonable measures to prevent or punish the subordinate criminal conduct in question

3.2.1.3.1 Common sub-element for the failure to prevent and the failure to punish
3.2.1.3.2 First form of superior responsibility: the failure to prevent 227
3.2.1.3.3 Second form of superior responsibility: the failure to punish 229
3.3 The scope of the subordinate criminal conduct that may give rise to superior responsibility 237
3.4 Superior responsibility in the International Criminal Court and internationalised tribunals 252
3.4.1 The International Criminal Court 252
3.4.1.1 A bifurcated standard 253
3.4.1.2 Mental element: a higher standard for civilian superiors 258
3.4.1.3 Causation 260
3.4.1.4 Past crimes and independent obligations 262
3.4.2 The internationalised tribunals 264
3.4.2.1 Special Court for Sierra Leone (SCSL) 264
3.4.2.2 East Timor: Special Panels for Serious Crimes (SPSC) 268
3.4.2.3 The Extraordinary Chambers in the Courts of Cambodia (ECCC) 271
3.4.2.4 Supreme Iraqi Criminal Tribunal (SICT) 272
3.5 Conclusion 274
4 Complicity and aiding and abetting 278
4.1 The modes of participation in genocide: inchoate crimes or forms of responsibility? 280
4.2 The relationship between ‘aiding and abetting genocide’ and ‘complicity in genocide’ 291
4.3 Elements of aiding and abetting 303
4.3.1 Physical elements 304
4.3.1.1 Practical assistance, encouragement, or moral support: first physical element 305
4.3.1.1.1 The accused lent practical assistance, encouragement, or moral support to the physical perpetrator in committing a crime 305
4.3.1.1.2 The accused may aid and abet by mere presence at the scene of the crime 307
4.3.1.1.3 Does a form of responsibility known as ‘aiding and abetting by omission’ exist in international criminal law?

4.3.1.1.4 The accused may aid and abet in the planning, preparation, or execution of a crime, and before, during, or after the crime of the physical perpetrator.

4.3.1.1.5 The accused need not be physically present when the physical perpetrator commits the crime.

4.3.1.2 Substantial effect: second physical element

4.3.1.2.1 The practical assistance, encouragement, or moral support had a substantial effect on the commission of the crime by the physical perpetrator.

4.3.2 Mental elements

4.3.2.1 Intentional action

4.3.2.1.1 The accused acted intentionally with knowledge or awareness that his act would lend assistance, encouragement, or moral support to the physical perpetrator.

4.3.2.2 Awareness of crime

4.3.2.2.1 The accused was aware of the essential elements of the physical perpetrator’s crime, including the perpetrator’s mental state.

4.3.2.3 The requisite intent of the accused aider and abettor for specific-intent crimes

4.4 Elements of complicity in genocide

4.4.1 Practical assistance, encouragement, or moral support: first physical element

4.4.1.1 The accused lent practical assistance, encouragement, or moral support to the physical perpetrator in committing a crime.
4.4.2 Substantialeffect: second physical element
   4.4.2.1 The practical assistance, encouragement, or moral support had a substantialeffect on the commission of the crime by the physical perpetrator

4.4.3 Mental elements: intentional action and awareness of crime
   4.4.3.1 The accused acted intentionally, and was aware of the essential elements of the crime of genocide, including the perpetrator’s mental state

4.5 Complicity and aiding and abetting in the International Criminal Court and internationalised tribunals
   4.5.1 The International Criminal Court
   4.5.2 The internationalised tribunals
      4.5.2.1 Special Court for Sierra Leone (SCSL)
      4.5.2.2 East Timor: Special Panels for Serious Crimes (SPSC)
      4.5.2.3 The Extraordinary Chambers in the Courts of Cambodia (ECCC)
      4.5.2.4 Supreme Iraqi Criminal Tribunal (SICT)

4.6 Conclusion

5 Planning, instigating and ordering
   5.1 Evolution of the elements of planning, instigating and ordering in the jurisprudence of the ad hoc tribunals
   5.2 Elements of planning
      5.2.1 Design of conduct with intent or awareness of substantial likelihood
      5.2.2 Substantial contribution
   5.3 Elements of instigating
      5.3.1 Prompting of conduct with intent or awareness of substantial likelihood
      5.3.2 Substantial contribution
   5.4 Elements of ordering
      5.4.1 Instruction to engage in conduct with intent or awareness of substantial likelihood
      5.4.2 Authority of accused
      5.4.3 Direct and substantial contribution
   5.5 Planning, instigating and ordering in the International Criminal Court and internationalised criminal tribunals
      5.5.1 The International Criminal Court
## Contents

5.5.2 The internationalised tribunals 373
  5.5.2.1 Special Court for Sierra Leone (SCSL) 373
  5.5.2.2 East Timor: Special Panels for Serious Crimes (SPSC) 376
  5.5.2.3 The Extraordinary Chambers in the Courts of Cambodia (ECCC) 377
  5.5.2.4 Supreme Iraqi Criminal Tribunal (SICT) 378

5.6 Conclusion 379

6 Concurrent convictions and sentencing 381
  6.1 Choosing among forms of responsibility 382
    6.1.1 Concurrent convictions pursuant to more than one Article 7/6(1) form of responsibility 388
    6.1.2 Concurrent convictions pursuant to Article 7/6(1) and Article 7/6(3) 393
  6.2 Forms of responsibility and sentencing 406

7 Conclusion 415
  7.1 Innovations in the law on forms of responsibility in the ad hoc Tribunals 416
  7.2 The ad hoc Tribunals’ emphasis on ‘commission’ liability 419
  7.3 Limitations on trial chamber discretion in choosing forms of responsibility 423
  7.4 The future development of the law on forms of responsibility 424

Annex: Elements of forms of responsibility in international criminal law 426

Index 430
Foreword

International criminal law is a new branch of law, with one foot in international law and the other in criminal law. Until the Nuremberg trial, international criminal law was largely ‘horizontal’ in its operation – that is, it consisted mainly of co-operation between states in the suppression of national crime. Extradition was therefore the central feature of international criminal law. Of course there were international crimes, crimes that threatened the international order, such as piracy and slave trading, but with no international court to prosecute such crimes, they inevitably played an insignificant part in international criminal law. In 1937 came the first attempt to create an international criminal court, for terrorism, but the treaty adopted for this purpose never came into force. The Nuremberg and Tokyo trials mark the commencement of modern international criminal law – that is, the prosecution of individuals for crimes against the international order before international courts. The Nuremberg and Tokyo tribunals have been criticised for providing victors’ justice, but they did succeed in developing a jurisprudence for the prosecution of international crimes that courts still invoke today. The Cold War brought this development to an end. Attempts to create a permanent international criminal court failed and it was left to academics to debate and dream about the creation of such a court for the next forty years.

All this changed with the end of the Cold War and the creation of ad hoc tribunals for the former Yugoslavia and Rwanda. At last the international community had two genuine international tribunals to dispense justice. ‘Vertical’ international criminal law – that is, the prosecution of individuals for international crimes before international courts – became a reality. However, no sooner had the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) started to function than attention was diverted to the creation of a
permanent international criminal court to try crimes throughout the world and not just in Yugoslavia and Rwanda. International lawyers applauded the proposal for such a court put forward by the International Law Commission and scrambled to participate in the Rome Conference of 1998 for the creation of an international criminal court. Attention remained focused on the International Criminal Court as the number of states ratifying the Rome Statute grew and the International Criminal Court finally became a reality in 2002. At this time there was a burst of writing and many books and journal articles appeared on the structure, jurisdiction, procedure and substantive law of the International Criminal Court.

In recent times, in part as a result of disillusionment following the slow start of the International Criminal Court, the pendulum of international criminal law has been swung back once more to where it should probably have been all the time – the ad hoc tribunals. Throughout the period of excitement and expectation over the creation of the International Criminal Court, the ICTY and ICTR quietly proceeded with the prosecution of international criminals for the most serious crimes known to mankind – genocide, crimes against humanity and war crimes. The trial of Slobodan Milošević received much media attention but little attention was paid to the daily work of the ICTY and ICTR. Lengthy, carefully researched and thoroughly reasoned judgments have been handed down by judges from different backgrounds and with different judicial experience. These judgments have created a new, truly international or transnational international criminal law that draws on the experience of Nuremberg and Tokyo and national criminal courts, and successfully integrates national and international criminal law, humanitarian law and human rights law. At the same time the ICTY and ICTR have created vibrant institutions that attract judges and lawyers from many countries, united in their commitment to international justice. Over 1,000 lawyers and para-legals are today employed in some capacity before international tribunals – and most are with the ICTY or ICTR.

Publications have not kept pace with developments before the ICTY and ICTR. Writings on these courts, particularly in comparison with writings on the International Criminal Court, are few. Moreover, much of the writing on the ICTY and ICTR focuses on the structure of the tribunals and their procedures, rather than on the substantive law applied. *International Criminal Law Practitioner Library Series*, with one volume devoted to forms of responsibility and the other to elements of crime, therefore makes a timely appearance. Written by three young international criminal lawyers who have all worked in the ICTY and been directly involved in the evolution of the law before the tribunal, the study examines the substantive law of the tribunals.
primarily from the perspective of the international criminal law practitioner, with the needs of the practitioner in mind. However, as one would expect from authors with such distinguished academic credentials, the study has an equal appeal to the legal academic and student.

Inevitably, as the ICTY and ICTR provide the richest source of substantive criminal law, the study focuses on the jurisprudence of these tribunals. The jurisprudence of other tribunals is not, however, ignored. The law of Nuremberg and Tokyo features prominently, and the law and structures of the other international or internationalised tribunals – the Special Court for Sierra Leone (SCSL), the Special Panels for Serious Crimes in East Timor (SPSC), the Supreme Iraqi Criminal Tribunal (SICT), the Extraordinary Chambers of the Courts of Cambodia (ECCC) and, of course, the International Criminal Court – are also examined. The law of the International Criminal Court, contained in its primary instruments dealing with crimes and elements of crimes, receives particular attention.

Volume I deals with the law of individual criminal responsibility in international criminal law. This law seeks to capture all the methods and means by which an individual may contribute to the commission of a crime and be held responsible under the law. It aims to ensure that not only the perpetrator but also the high- or mid-level person – both civil and military – frequently removed from the actual perpetration of the crime, may be held responsible. Consequently this volume focuses on the various forms of participation in international crimes – joint criminal enterprise, superior responsibility, aiding and abetting and planning and instigating international crimes.

Volume II will cover the elements of the core international crimes of genocide, crimes against humanity and war crimes, as seen from the perspective of law of both the ad hoc international tribunals and other tribunals.

The authors are not content with a mere portrayal or description of the law. The approaches of different tribunals, and the approaches of different judges within the same tribunal, are compared and contrasted; and decisions are carefully analysed and criticised. Moreover, the views of scholars are considered and integrated into the text.

*International Criminal Law Practitioner Library Series* will primarily, and in the first instance, assist the international criminal law practitioner, whatever his or her court. But it will also be of assistance to the growing body of national lawyers engaged in the practice of international criminal law before domestic courts. As the Rome Statute of the International Criminal Court gives jurisdiction over international crimes in the first instance to domestic courts, in accordance with the principle of complementarity, it can be expected that this body of lawyers will grow.
Gideon Boas, James Bischoff and Natalie Reid are to be congratulated on a work that concentrates on the jurisprudence of the main source of contemporary international criminal law – the law of the *ad hoc* tribunals – but which at the same time takes account of all the other sources of this rapidly expanding branch of law. Practitioners, academics and students will learn much from this excellent study.

John Dugard
The Hague
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Prosecutor v. Kamuhanda, Case No. ICTR-99-54A 284, 366, 370–1, 389–92, 400
Prosecutor v. Karemera, Ngirumpatse, and Nzirore, Case Nos. ICTR-98-44 97, 287–9
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Prosecutor v. Mpambara, Case No. ICTR-01-65 32–3, 314–15
Prosecutor v. Muhimana, Case No. ICTR-95-1B 6
Prosecutor v. Musema, Case No. ICTR-96-13 302
Prosecutor v. Muvunyi, Case No. ICTR-00-55A 189, 314, 360–1, 369
Prosecutor v. Nahimana, Barayagwiza, and Ngeze, Case No. ICTR-96-11 6, 355, 357
Prosecutor v. Ndindabahizi, Case No. ICTR-01-71 6, 364
Prosecutor v. Ntagerura, Bagambiki, and Imanishimwe, Case No. ICTR-99-46 31–2, 202

xvii
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Prosecutor v. Rutaganira, Case No. ICTR-95-1C 311
Prosecutor v. Rwamukunda, Case No. ICTR-98-44 27–8, 29, 141
Prosecutor v. Seromba, Case No. ICTR-2001-66 6
Prosecutor v. Simba, Case No. ICTR-2001-76 32, 56, 387

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Prosecutor v. Babić, Case No. IT-03-72 50–1
Prosecutor v. Blagojević and Jokić, Case No. IT-02-60 37, 40, 43, 50, 51, 96, 186, 197, 201, 202–3, 210, 281, 286–7, 297–8, 299, 316, 327, 328–9, 330
Prosecutor v. Furundžija, Case No. IT-95-17/1 10–14, 40, 305, 307–8
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Prosecutor v. Hadžihasanović and Kubura, Case No. IT-01-47 175–6, 187–9, 195, 220–1, 233–7, 238, 412
Prosecutor v. Halilović, Case No. IT-01-48 177–8, 194–5, 211, 220–4
Prosecutor v. Jokić, Case No. IT-01-42/1 404–6
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Table of authorities

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Prosecutor v. Limaj, Bala, and Musliu, Case No. IT-03-66 79, 183–4, 211, 230–1, 352
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### Table of authorities

<table>
<thead>
<tr>
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</tr>
</thead>
<tbody>
<tr>
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</tr>
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</tr>
</tbody>
</table>

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Prosecutor v. Jose Cardoso Fereira, Case No. 04/2001 135–6
Prosecutor v. Soares, Case No. 11-2003 270–1

**Supreme Iraqi Criminal Tribunal (SICT) cases**
*Anfal* case 379
*Dujail* case 138–40, 273–4, 340, 378–9

Table of authorities xxv