International Criminal Law Documents

This carefully edited text collects the major documents on International Criminal Law, through the early practice after the First World War, the Nuremberg and Tokyo International Military Tribunals up to the present. It includes the statutes of the ad hoc Tribunals for the former Yugoslavia and Rwanda, as well as the Rome Statute of the International Criminal Court and its associated documents, including the elements of crimes that were adopted to assist the Court, and its Rules of Procedure and Evidence. The book also includes the main treaty provisions that provide the basis of the subject.

Edited by a specialist in the field with more than twenty years' experience of teaching international criminal law, this book is designed for practical use by students and practitioners. For students it is ideal as a companion for both study and examination.

Robert Cryer is Professor of International and Criminal Law at the University of Birmingham. He has spoken widely around the world on issues of international law (including international crimes such as genocide, crimes against humanity and war crimes), criminal law more generally, and criminal co-operation (including extradition) in both academic and media contexts. His previous publications include *An Introduction to International Criminal Law and Procedure* (2019) (with Darryl Robinson and Sergey Vasiliev) and *The Tokyo International Military Tribunal: A Reappraisal* (with Neil Boister)(2008).

International Criminal Law Documents

EDITED BY **ROBERT CRYER**
University of Birmingham

CAMBRIDGE
UNIVERSITY PRESS

Shaftesbury Road, Cambridge CB2 8EA, United Kingdom

One Liberty Plaza, 20th Floor, New York, NY 10006, USA

477 Williamstown Road, Port Melbourne, VIC 3207, Australia

314–321, 3rd Floor, Plot 3, Splendor Forum, Jasola District Centre, New Delhi – 110025, India

103 Penang Road, #05–06/07, Visioncrest Commercial, Singapore 238467

Cambridge University Press is part of Cambridge University Press & Assessment, a department of the University of Cambridge.

We share the University's mission to contribute to society through the pursuit of education, learning and research at the highest international levels of excellence.

www.cambridge.org
Information on this title: www.cambridge.org/9781108729086

DOI: 10.1017/9781108678926

First published 2019

A catalogue record for this publication is available from the British Library

Library of Congress Cataloging-in-Publication data
Names: Cryer, Robert, editor.
Title: International criminal law documents / edited by Robert Cryer, University of Birmingham.
Description: Cambridge, United Kingdom ; New York, NY, USA : Cambridge University Press, 2019. | Includes index.
Identifiers: LCCN 2018053755 | ISBN 9781108729086
Subjects: LCSH: International criminal law – Sources. | LCGFT: Treaties.
Classification: LCC KZ7026 .I583 2019 | DDC 345/.00261–dc23
LC record available at https://lccn.loc.gov/2018053755

ISBN 978-1-108-72908-6 Paperback

Contents

EDITOR'S PREFACE

The purpose of this book can be stated fairly simply. It is to collect together the major international criminal law documents in one physical place. Even in the internet era, I believe that there is room for such a work not only for students, for both classroom and examination purposes, but also for practitioners and scholars, if nothing else for practical ease of use (often 'on the road', in the classroom, or in the courtroom). International criminal law (as is understood here) is now a broad and popular area of study and practice, so it was felt that it would be of assistance to provide a 'one stop' place where the documents were available for easy reference.

Conceptual Matters

Of course, international criminal law is not a self-defining term, it means different things to different people, and no one definition can claim even to be *primus inter partes*.[1] The one adopted here, solely for the purposes of ensuring a manageable and coherent book, is those crimes covered by the statement of the Nuremberg International Military Tribunal (IMT): 'crimes against international law are committed by men, not abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced … individuals have international duties which transcend the national obligations of obedience imposed by the individual state'.[2] These crimes are aggression, crimes against humanity, genocide and war crimes.

Others would define international criminal law more broadly as including those treaties which, whilst not creating direct liability for individuals, create obligations on States to criminalise conduct that they define in their domestic legal orders. These tend to be known as transnational criminal law conventions.[3] The various Drug Trafficking Conventions fall into this category, as do, although the matter is not beyond controversy, treaties on torture or terrorism. The two categories are not hermetically sealed, however, and there are those who believe that terrorism and individual acts of peacetime torture are direct liability international crimes.[4] There is no conceptual reason that conduct has to be considered, by its nature, as either an international or a transnational crime, it is simply how States wish to classify it.[5] Partially for these reasons, as well as to provide a counterpoint to the international criminal law documents, this book includes a small number

[1] See Robert Cryer, Håkan Friman, Darryl Robinson and Elizabeth Wilmshurst, *An Introduction to International Criminal Law and Procedure* (4th edn, Cambridge University Press 2019) 4.

[2] Nuremberg IMT: Judgment and Sentences (1947) 41 *AJIL* 172 at 221.

[3] Neil Boister, *An Introduction to Transnational Criminal Law* (2nd edn, Oxford University Press 2012) especially chapters 1–2.

[4] See, e.g., Antonio Cassese and Paola Gaeta *et al.*, *Cassese's International Criminal Law* (3rd edn, Oxford University Press 2013) chapter 8.

[5] Neil Boister, 'Transnational Criminal Law?' (2003) 14 *EJIL* 953, 954–6.

of transnational criminal law documents. However, there are literally hundreds of such conventions, so for reasons of space (and to keep the cost to the reader reasonable) this book largely keeps strictly to the more limited understanding of international criminal law identified above.

Criteria for Inclusion

For the most part, this book limits itself to the treaty law related to its understanding of international criminal law; however, international criminal law is not only made up of and developed by treaty law, so some General Assembly and Security Council Resolutions and Reports (including of the Secretary-General of the United Nations (UN) and the International Law Commission (ILC)) have also been reprinted. One issue that arose was the question of whether to include excerpts from selected, hugely important cases that are foundational in international criminal law (for example, the Nuremberg IMT's Judgment, mentioned above, and the well-known 1995 International Criminal Tribunal for the Former Yugoslavia (ICTY) 1995 decision in the *Tadić* Interlocutory Appeal[6] were both primary candidates for inclusion). However, on balance it was considered that it would increase the length of the book too much, and would risk making it into an *ersatz* cases and materials book (and there are already a number of examples of good collections of cases and materials available[7]), and reduce the likelihood of it being permitted in examinations. If readers think differently, I would very much like to hear from them.

Reasons of space, and the view being taken that the book should in essence reflect the universal aspects of international criminal law,[8] mean that regional treaties have not been included. It is, of course, the case that very few of the treaties included herein are universally ratified (only the Geneva Conventions of 1949 could make such a claim) so they are not in some respects truly universal (although they may reflect customary law, and many do). That said, including the specific parties to each treaty would make the book unwieldy. Furthermore, any such list of parties is likely to very quickly become out of date. Here is one area where the internet can be used to supplement the material in this book.

As a quick note on the organisation of materials, the arrangement is, with very small deviations (which relate to the manifest links between the documents) chronological. This seemed to be the most logical way to order the materials. It would have been possible to take a different view, and group documents (or even parts of them) conceptually. However, this route was not taken, as it relies on a pre-existing conceptual understanding that matches that of the editor, which may not always be shared. However, there is also an index to assist in identifying provisions in a more thematic manner.

Brief Notes on the Documents

The purpose of this section is to explain briefly the context of the various documents, some of the reasons for their inclusion, and the relationships they have to one another. It

[6] *Prosecutor* v *Tadić,* Decision on the Defence Interlocutory Appeal on Jurisdiction, IT-1–4-AR72, 2 October 1995.

[7] For examples from both sides of the Atlantic see: Antonio Cassese *et al.*, *International Law: Cases and Commentary* (Oxford University Press 2011); Beth van Schaak and Ronald Slye, *International Criminal Law and its Enforcement: Cases and Materials* (3rd edn, St Paul, MN: Foundation Press 2014).

[8] Which is not to denigrate regional or pluralist approaches, on which see Elies van Sliedregt and Sergey Vasiliev (eds), *Pluralism in International Criminal Law* (Oxford University Press 2014).

does not pretend to be anything like a detailed analysis of the documents, so it ought not to be taken as one.

The book begins with excerpts of the 1919 Report of the Commission on the Responsibility of the War, and on Their Punishment. This Commission was set up by the victorious Allies in the aftermath of World War I to decide on what to do with the defeated powers. In this they looked at the responsibility for starting the various conflicts that made up World War I. Unsurprisingly, this was placed firmly at the door of Germany and States aligned to it. However, the Commission also decided that there was no direct criminal liability in international law for aggression, although there was for war crimes and crimes against humanity. As such, the Report is probably the best place to identify the genesis of modern international criminal law. There were two dissents, however, one from the United States' (US) members, who argued that aggression was best left to the judgement of historians rather than lawyers, and that crimes against humanity were not international crimes. The Japanese representatives, on the other hand, queried whether international criminal law existed at all.

The Report had a considerable influence on the 1919 Treaty of Versailles, between the Allies and Germany. Article 227 dealt with the way in which the Kaiser was to be handled. He was to be arraigned before an international tribunal for an offence against morality and the sanctity of treaties (notably not an international crime – reflecting the Commission's views). As is well known, this provision was never put into effect, as the Kaiser fled to the Netherlands, who refused to extradite him on the basis that he was accused of a political offence.

Those suspected of war crimes or crimes against humanity were to be handed over to the Allied powers for domestic trials pursuant to Article 228. This provision was, for political reasons, never enforced, and the only outcome was the Leipzig trials, undertaken by Germany on the basis of German law, and notoriously lenient to the defendants. Even so, both provisions are included here, with others, for historical context.

From here we move to probably the first practical use of international criminal law. That was in 1945, and the Nuremberg IMT Statute (strictly speaking, an annex to a treaty, the London Agreement, that created the Tribunal (which was also adhered to by nineteen Latin American States – who derived no rights under it)). The Nuremberg IMT Statute was negotiated in London, amidst difficult discussions between France, the Soviet Union, the United Kingdom (UK) and the US. The Statute not only set up the Tribunal, but also defined the law it was to apply, including for the first time defining crimes against humanity. Very controversially, the Statute criminalised aggression (or, as it was called in Nuremberg 'crimes against peace'), the existence of which prior to 1945 was deeply controversial. We cannot overestimate the importance of the Nuremberg proceedings to the development of international criminal law.

The conduct of the proceedings was sometimes criticised for insufficiently protecting the rights of the defence, but the general view is that the proceedings were basically fair, especially when the mores of the time (which was prior to modern human rights law) are taken into account. This is part of the reason leading to the inclusion of the Tribunal's Rules of Procedure and Evidence, but it is also because of their brevity. It is interesting to compare them to the often exceptionally detailed Rules of Procedure and Evidence in the modern international criminal courts and tribunals. Also included here is Control Council Law No. 10, which was strongly linked to the Allied attempt to prosecute Nazis.

The Control Council was the joint body through which the Allies ruled Germany, and Law No. 10 was intended to co-ordinate the Allied efforts. Some consider that the US courts which sat pursuant to Law No. 10 were international courts,[9] but they are best seen, at most, to be an early example of 'hybrid' or 'internationalised' courts.

Although it is less well known, the Nuremberg Tribunal had a sibling in Tokyo, the IMT for the Far East. Rather than on the basis of a treaty, this was created by a proclamation of General Douglas MacArthur, the Supreme Commander of the Allied Powers. It was largely drafted by the prosecution, on the basis of the Nuremberg Tribunal's Statute (the borrowing of language in international criminal law, as in international law more generally, is common). MacArthur then willed it into being. However, three days before the Tribunal received the indictment MacArthur altered the Statute, to add India and the Philippines to the Proceedings, and, at the behest of the prosecution, to alter the definition of crimes against humanity to allow the prosecution to run the argument that all killings in an aggressive war were just murder. The argument for the rectitude of adding two new nations to the bench and prosecution is probably on balance one that can be made. The acceptability of altering a definition of a crime to the detriment of the defence is less so. The Rules of Procedure and Evidence are also reprinted. Even though they drew heavily on the Nuremberg Tribunal's rules, the conduct of the Tokyo Tribunal's proceedings have been almost universally criticised, showing that irrespective of the rules, those interpreting them still matter immensely.

The first major multilateral international criminal law treaty was the 1948 Genocide Convention, which was promulgated through the (then new) UN system a mere four years after the term was first coined by Raphaël Lemkin in his *Axis Rule in Occupied Europe* in 1944.[10] The Convention was preceded by General Assembly Resolution No. 96(I) of 1946, but was the first treaty of its type to create a generally applicable international crime in the pure sense (the Nuremberg and Tokyo Tribunal's jurisdictions were limited to the losing powers in World War II). A key provision, which differentiates it from transnational criminal law conventions, is Article I, which provides that 'genocide is a crime under international law', thus creating direct individual criminal liability. It has also been taken to imply that there is State responsibility flowing from the convention.[11] It is a key treaty in international criminal law, and its definition of genocide (in Article II) has since been repeated essentially verbatim in all international criminal courts and tribunals with jurisdiction over genocide.

Only a year later (in 1949), the Geneva Conventions were finalised. These contained the famous 'Grave Breaches' provisions (excerpted here), which create a form of mandatory universal jurisdiction over such breaches. It is often thought that Grave Breaches are a – if not the – quintessential example of war crimes, for which there is direct liability under international law. That may now be generally accepted (and it is and, as such, is the law on point) but the provisions read more like those of a transnational criminal law treaty. For example, there is nothing like Article I of the Genocide Convention in the Geneva Conventions, and the duty is to criminalise them domestically, and to extradite

[9] *Prosecutor* v *Erdemović*, Dissenting Opinion of Judge Cassese, IT-96–22-A, 7 October 1997, para. 21.
[10] Raphaël Lemkin, *Axis Rule in Occupied Europe* (Washington, DC: Carnegie Endowment for International Peace 1944) p. 79.
[11] *Case concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (Bosnia and Herzegovina *v* Serbia and Montenegro) ICJ 26 February 2007, paras 162–6.

or prosecute suspects. Indeed the term 'Grave Breaches' was deliberately chosen because it was not 'war crimes'. Although it is now universally accepted that these provisions are war crimes, they do not, however, exhaust the law of war crimes, which are comprised of all serious violations of international humanitarian law. It would not be possible to include all of the relevant treaties on point; the standard reference guide runs to more than 750 pages.[12]

By the time of the Geneva Conventions, the Cold War had begun, and this largely stymied further development of international criminal law for almost two decades. By the late 1960s, however, a problem had arisen: prosecutions of Nazis in Germany – who had been undertaking such prosecutions under domestic law since the early 1960s – were approaching being time barred. Nazis had few powerful friends on either side of the Iron Curtain, and so the 1968 Convention on the Non-applicability of Statutory Limitations to War Crimes and Crimes against Humanity came from the UN General Assembly. This was rather sparsely ratified.[13] The Convention is well described by its title, although at the international level was not really necessary. As liability for international crimes comes from international law, no domestic jurisdiction can exclude that liability, and international criminal law knows of no doctrine of statutory limitation (other than to exclude it). It is notable, however, that although it was drafted with Nazis in mind, it was framed as universally applicable, but it remains a rare document on international crimes from the era.

Universality cannot quite be said of the next document included here: the 1973 International Convention on the Suppression and Punishment of the Crime of *Apartheid*, which, by its own terms, applied to '"the crime of apartheid", which shall include similar policies and practices of racial segregation and discrimination as practised in southern Africa, shall apply to the following inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them …'. (Article II). It also declares *Apartheid* to be a crime against humanity (Article I). Naturally, during the *Apartheid* era there was no possibility of South Africa ratifying it, and there have never been any prosecutions referable to it. That said, it has been quite broadly ratified (it currently has 107 parties), and its existence influenced the drafters of the Rome Statute of the International Criminal Court to include *Apartheid* as a crime against humanity in Article 7 of that treaty.

During this period perhaps the most influential document on international criminal law was not, in fact, binding at all. This was UN General Assembly Resolution No. 3314, that assembly's 1974 definition of aggression. Although intended primarily as a guide to the UN Security Council when exercising its powers under Chapter VII of the UN Charter, and differentiating a war of aggression (described as an international crime) from an act of aggression (which is the language of Article 39 of the UN Charter), it has hugely influenced the debate on aggression generally, and the definition of aggression for the purposes of the International Criminal Court.

States returned to update international humanitarian law relatively soon after (in particular in the aftermath of the Vietnam War, and owing to the fact that most armed

[12] Adam Roberts and Richard Guelff (eds), *Documents on the Law of War* (3rd edn, Oxford University Press 1999).
[13] Fifty-five as of 2018.

conflicts were non-international in nature and thus at the time relatively unregulated). This book includes the provisions on Grave Breaches in the 1977 Additional Protocol I to the 1949 Geneva Conventions, which apply to international armed conflicts, expand (in Article 85) the list of Grave Breaches to include certain violations of that Protocol (including *Apartheid*), and for the first time (in Articles 86–7) create a treaty basis for the very important international criminal law principle of command responsibility.[14] In contrast, Additional Protocol II, which applies to non-international armed conflicts, says nothing about criminal liability for breaches of its provisions. States at the time had no appetite for that.

This book's next treaty is the 1984 UN Convention against Torture. This is, strictly speaking, a transnational criminal law convention in that it does not create a crime in and of itself, but requires States to criminalise the conduct in their domestic law (and creates various other obligations surrounding crime and torture in general). In the first, 'Siracusa', draft of the Torture Convention, the drafters (who were not State representatives) included an article very similar to Article I of the Genocide Convention, declaring that torture was a crime under international law. When this draft was presented to States, it was immediately deleted. We have included the Torture Convention owing to the fact that there is a clear overlap between international and transnational crimes. For example, torture can be a means of committing international crimes in the narrow sense (war crimes, crimes against humanity and genocide) and, as mentioned above,[15] there are those that argue that individual acts of torture are direct liability international crimes. It is also useful to compare and contrast the Torture Convention with, for example, the Genocide Convention to see how the methods of drafting have changed.

This brings us to the renaissance era of international criminal law, the 1990s. The first document began the leap forward. This is the Report the Secretary-General of the UN was asked to write (and wrote in an astonishingly quick – for the UN – sixty days[16]) proposing a Statute for an international criminal tribunal to deal with the offences committed in the former Yugoslavia (i.e. the ICTY). This report, and the Statute it contained, was adopted by the UN Security Council in Resolution No. 827 (which is included here as it is, amongst other things, the foundation of the powers of the ICTY). The Report's commentary acts almost as the *travaux préparatoires* of the ICTY Statute. This book also includes, separately, an updated version of the ICTY Statute, for two reasons: first, for ease of use (unlike the Report, which intersperses the articles of the Statute with the commentary on them), and second, the Statute has been amended quite a few times since it was promulgated, so this book includes the most up-to-date version.

When the ICTY was created (and in part owing to the breakneck pace with which the Statute was adopted) not everything was fully thought through. One of the thornier issues that was passed over was what would happen when the Tribunal closed. Sentences still have to be supervised, decisions on parole have to be made, or new facts could require cases to be reopened. As a result, in 2010 the UN Security Council issued Resolution No. 1966 (also included), which set up a skeletal form of the Tribunal to perform these functions (the same applies to the International Criminal Tribunal for Rwanda (ICTR)). This

[14] Because of its connection to the 1949 Geneva Conventions, Additional Protocol I appears in Chapter 6 of this book, although chronologically this is not its place.
[15] Above, n 4.
[16] For the avoidance of doubt, as anyone who has worked with or for the UN will attest, this is not sarcasm.

goes by the name of the Residual Mechanism for the International Criminal Tribunals (and the unglamorous acronym MICT) and has now become the replacement for the Tribunals. A year after the creation of the ICTY, the most unambiguous example of genocide in the post-war era occurred in Rwanda. It was thought that it would be at the least Eurocentric, and perhaps racist, to have a Tribunal for a European conflict which had genocidal aspects, but not for an African genocide. Therefore the UN Security Council issued Resolution No. 955, which created the ICTR, the ICTY's conjoined twin, and annexed its Statute to that Resolution. The Statute, which is reproduced here, was clearly modelled, *mutatis mutandis*, on the ICTY Statute, although it was drafted by members of the UN Security Council rather than the Office of Legal Affairs of the UN Secretary-General. It is for this reason that the Report of the Secretary-General on the ICTR has not been included here; it does not quite perform the same role as the one that was written on the ICTY, as it does not contain the words of the drafters.

In the same year as the ICTR was created (1994), the International Law Commission (ILC) issued its second draft Statute for an (note the indefinite article) International Criminal Court. It had released its first in 1993. The second, whilst still bearing the strong imprimatur of its predecessor, also showed the influence of the then very recent ICTY Statute. What is notable is the mixing, to a fair extent, of international and transnational crimes and the strong emphasis on State consent. It is useful to compare this with the Rome Statute discussed below. For substantive law, it is also worth comparing the Rome Statute with another project of the ILC, the 1996 Draft Code of Crimes against the Peace and Security of Mankind. Although with the creation of the International Criminal Court, the project is essentially now defunct (though the ILC remains involved in projects that overlap with it), it is a useful artefact to show not only what could have been but also the porous border between international and transnational crimes.

The largest number of documents on any one institution in this book are on one institution in particular: the (the definite article is telling) International Criminal Court. This is because it is the most important (and soon to be perhaps the only) international criminal court or tribunal. The ICTY and the ICTR have closed and been replaced with the MICT, and (to the extent to which it is international) the Special Court for Sierra Leone (SCSL, discussed below) has also closed its doors. The first document, both chronologically and as the Court's foundational document, is the Rome Statute, negotiated in a tense and heated atmosphere in its titular city. The disagreements were numerous and deep, legal and political, principled and self-interested, and everything in between. Indeed, delegates supportive of the Court were by no means certain, even minutes before the final vote in the Committee of the Whole (not strictly the final vote of the Conference, but the one that would, to all intents and purposes, decide the matter), whether the final compromise draft would go through. When it did spontaneous joy broke out amongst supportive delegates, to the consternation of those who would have preferred the opposite conclusion.

The task facing the delegates was to create a court system (albeit not an entire criminal justice system (the Court has no police or other formal enforcement powers)) from scratch that would be strong enough to work, yet respectful enough of sovereignty that States would accept it. In addition they had to draft its substantive law (which is not coterminous with international criminal law *tout court*) and its processes as well as its institutional structure. That they managed to get a text which was tolerable to a large majority of States is extraordinary. Whether they achieved their (often differing) aims

is a separate issue that can only be understood with reference to the Rome Statute and two accompanying documents, adopted by the Assembly of States Party of the International Criminal Court (itself a creature of the Rome Statute) in 2002. These are the Rules of Procedure and Evidence and the Elements of Crimes (which are detailed (albeit non-binding) further definitions of the crimes in the Rome Statute). Hence the inclusion of all three documents. Furthermore, in 2010 the Assembly of States Parties adopted two amending protocols to the Rome Statute, one applying additional offences to non-international armed conflicts, the other – which many thought to be the Holy Grail of international criminal law – a definition of aggression.[17] The final document that has made its way into the pages that follow about the Court is the Relationship Agreement, that is the agreement concerning the relationship the Court has with the UN. In spite of often expressed (or assumed) views to the contrary, the International Criminal Court is not a UN organ; it is a separate international organisation with its own international legal personality. Even so, for obvious reasons (including the relationship it has with the UN Security Council), both bodies were keen to formalise their institutional relationship in detail. The agreement is often forgotten in discussions about the Court and the UN, but it is an important part of it.

Leaving the Court, in a serendipitous confluence of concept and chronology, the next three chapters relate to 'hybrid' tribunals. These disparate tribunals are neither fully national nor fully international, but have a mixture of both elements, albeit with different blends. The most 'international' is the SCSL, which was created to deal with the Sierra Leonean conflict and based on a treaty between the UN and Sierra Leone. In spite of the Secretary-General's view that the Court was 'a treaty-based sui generis court of mixed jurisdiction and composition',[18] the Court considered itself to be fully international.[19] This book includes both the Statute of the SCSL and, since it has completed its work, the Residual Mechanism for the SCSL.

A different model is encapsulated in the next treaty, the 2003 Agreement between the UN and Cambodia relating to the Extraordinary Chambers in the Courts of Cambodia, which was created, after difficult negotiations between the UN and Cambodia, to prosecute members of the Khmer Rouge. The Chambers are essentially Courts of Cambodia to which international Judges and prosecutors are appointed alongside their Cambodian counterparts. The two sets of appointed people (national and international) have a complex relationship, best understood by reading the Agreement itself. The practice of the Chambers has been mixed and subject to critique from both within and without.

The final hybrid tribunal included is the Special Tribunal for Lebanon, created in 2007 to deal with the assassination of Lebanese Prime Minister Rafik Hariri. It is the first time an international tribunal has been created to deal solely with one incident. It was originally intended that a treaty including the Statute would be agreed between the UN and the Lebanese government, which would then be ratified by the Lebanese Parliament. The first step was successful, but the Parliament refused to ratify the agreement. As a result, the UN Security Council passed Resolution No. 1757, which brought the agreement (and Statute) into force. Both the Statute and the Resolution are included here. Interestingly,

[17] These 'Kampala Amendments' are included in the version of the Rome Statute set out in this book. Amendments not in force have been omitted.
[18] Report by the Secretary-General on the Establishment of a Special Court for Sierra Leone, UN Doc. S/2000/915 of 4 October 2000, para. 9.
[19] *Prosecutor* v *Taylor*, Decision on Immunity from Jurisdiction, SCSL 03–01-I, 31 May 2004.

owing to the view being taken that there is no international crime of terrorism (as opposed to various transnational conventions dealing with aspects of terrorism) the drafters of the Statute referred instead to the Lebanese domestic definition. In a deeply controversial decision, the Special Tribunal for Lebanon decided that there was, in fact, a customary law crime of terrorism.[20]

The final document that made the cut for inclusion is one of the (more) recent substantive conventions that relate to international criminal law. This is the 2008 International Convention for the Protection of All Persons from Enforced Disappearances. This is rather like a modern version of the Torture Convention in that it deals primarily with transnational crime concerns, such as the obligation to criminalise disappearances at the national level and the obligation to extradite or prosecute, but does so in a more modern fashion (although the issue of enforced disappearances had arisen in the *Apartheid* Convention). For instance, Article 5 of the 2008 Convention expressly states that 'the widespread or systematic practice of enforced disappearance constitutes a crime against humanity as defined in applicable international law and shall attract the consequences provided for under such applicable international law', and Article 6 applies the principle of command responsibility to enforced disappearances although command responsibility is more usually associated with international crimes. It ought to be said, however, whether someone is prosecuted for a domestic, transnational or international crime often matters less to victims than the fact they are prosecuted at all.

Final Word

I hope that this work assists in the understanding of international criminal law amongst students, practitioners and those in the field. All selections of documents of this type are, by their nature, subjective, and not everyone will agree with all of the decisions on inclusions or exclusions. Any suggestions for subsequent editions are very welcome (r.cryer@bham.ac.uk). Thanks are due to Rhiannon Blake for help in collating the documents.

[20] *Prosecutor* v *Ayyash*, Interlocutory Decision on the Applicable Law, STL-11–01 16 February 2011.