

INDEX

- accused, favouring the, 205–08, 218–19, 401
- Ad Hoc Committee on the Establishment of an International Criminal Court, 70, 306, 309–11
- Additional Protocols* (1977), 12–13, 23, 38, 65, 238, 280–81, 284, 332
- Aerial Incident* case (1959), 377
- aggression, crime of, 271–72, 317. *See also* crimes against humanity
 - definition of, 317
 - jurisdiction, 253–56
- aids to interpretation, 64–68, 89–101, 174–82, 345–97, 404–19
 - and time, 373–92, 407
 - at the ICTY and ICTR, 64–68, 89–101
- charters for international military tribunals, 67
- customary law, 66, 349–57, 373–82, 407–10
- dictionary definitions, 8, 42, 67–68, 112, 393, 399
- domestic legal instruments and decisions, 65–66, 360–63, 411–13
- Elements of Crimes, 21–22, 287–301, 318, 363–66
- European Court of Human Rights jurisprudence, 67, 119–24, 413–15
- expert materials (teachings of publicists), 65, 361–63, 382–85, 412–13, 415–17
- General Assembly Resolution 3314 (XXIX), 271–74, 383–84, 416
- general principles, 178–82, 360–61, 411–12
- ICTY and ICTR jurisprudence, 362–63, 412
- international humanitarian law, 124–33
- internationally recognized human rights, 112–33
- International Court of Justice jurisprudence, 67
- interpretive Understandings, 366–73, 404–05
- jurisprudence, 66, 360–63, 412–13
- other authentic versions of treaty, 396–97, 419
- preparatory works, 66–67, 392–95, 417–18
- treaty law, 357–60, 410–11
- Al Bashir* Arrest Decision (2009), 363
- alleged perpetrator, 115
- ambiguity, 393, 401
- amendments, 76–77
- Amnesty International, 330–31
- analogous reasoning, 208–16, 219, 402. *See also* legality principle
 - civil law tradition, 209–10
 - common law tradition, 210
 - international history, 212–16
 - national history, 209–12
 - prohibition, 210–11
 - statutory laws and, 211
- apartheid, 278, 331
- Appeals Chamber, 16, 18, 22, 61, 66, 79, 127, 261
- applicable law, 226–27, 262–63
- Arab Convention for the Suppression of Terrorism* (1998), 160

Cambridge University Press

978-1-107-06772-1 - Interpreting Crimes in the Rome Statute of the International Criminal Court

Leena Grover

Index

[More information](#)

446

INDEX

- arbitrariness, 141–42
- armed conflict, 12–13
- Article 5 (Rome Statute), 246–50
- Article 9 (Rome Statute), 286–94
- Article 10 (Rome Statute), 263–69
- Article 11 (Rome Statute), 256–59
- Article 12 (Rome Statute), 250–56
- Article 13 (Rome Statute), 250–56
- Article 21 (Rome Statute), 262–63
- Article 21(3) (Rome Statute)
 - internationally recognized human rights and, 112–19
 - reconciliation with article 22, 119–24
- Article 22 (Rome Statute), 186–219
 - criminal responsibility, 189–90
 - drafting history, 186–89
 - legality and, 106–12
 - legality without prejudice, 216
 - non-retroactivity, 190–92
 - reconciliation with article 21(3), 119–24
- Article 22(1) (Rome Statute), 259–62
- Article 22(3) (Rome Statute), 263–69
- Article 24 (Rome Statute), 256–59
- Article 30 (Rome Statute), 295–301
- Article 31 (*Vienna Convention*), 345
- Article 31(1) (*Vienna Convention*), 398–400
- Article 31(2) (*Vienna Convention*), 404
- Article 31(3) (*Vienna Convention*), 346–49, 373–74, 387–92, 396–97, 404–07
- Article 31(4) (*Vienna Convention*), 373–74, 382–86, 414–16
- Article 32 (*Vienna Convention*), 345–46, 392–95, 416–18
- Article 33 (*Vienna Convention*), 346, 418–19
- Articles 31–33 (*Vienna Convention*), 39–47
- Articles 5–8 *bis* (Rome Statute), 269–86
- Assembly of States Parties to the Rome Statute, 73, 74, 76–77, 86, 124, 146–47, 254, 287, 289, 318, 324, 360–94
- Assembly of the League of Nations, 232
- Austria, 333
- Austrian Code of Joseph II (1787), 208
- authenticated texts, 418–19
- background principles, 14–15
- Baragwanath, David, 135
- Bavarian Code of 1751, 209
- Baxter paradox, 328–29
- Bielefelder Kreis, 9
- Border Guards* case (1996), 180
- Bos, Adrian, 339–40
- British North America Act* (1867), 25–27
- C v. Bulgaria* (2003), 339
- Calder v. Bull* (1978), 161
- Central African Republic, 2
- Certain Expenses of the United Nations* (1962), 389
- Charter for the International Military Tribunal for Nuremberg, 20
- Charter of the United Nations, 114, 273
- child soldiers, 284, 301, 332
- China, 266, 333
- circumstance, 295
- civil law, analogous reasoning, 209–10
- Coalition for the Establishment of an International Court, 71, 86
- Coalition Provisional Authority, 335
- Code of Napoleon, 231, 237
- codification, 231–43. *See also* custom
 - benefits, 243–45
 - definition, 231–43
 - drawbacks, 243–45
 - external indicia of, 303–44
 - conduct of States, 328–37
 - denunciations, 325–26
 - doctrinal writings, 339–43
 - drafting history, 303–17
 - jurisprudence, 337–39
 - Non-States Parties, 333–37
 - ratifications, 318–20
 - reservations, 320–25
 - revisions, 326–28
 - States Parties, 329–33
 - history of, 231–43
 - indicia, 243–45
 - internal indicia of, 246–302
 - applicable law, 262–63
 - definitions of crimes, 269–86

- Elements of Crimes, 286–94
 - legality, 259–62
 - material jurisdiction, 246–50
 - mental elements of crimes, 295–301
 - personal jurisdiction, 250–56
 - Rome Statute's relationship to international law, 263–69
 - temporal jurisdiction, 256–59
- study, 221–31
- codification conference, 232
- Colombia, 324
- Committee of Experts for the Progressive Codification of International Law, 232
- Committee of the Whole, 71
- Committee on International Criminal Jurisdiction, 305
- Committee on the Codification of International Law, 304
- common law, analogous reasoning, 210
- conduct, 295
- conduct of States, 328–37
 - Non-States Parties, 333–37
 - States Parties, 329–33
- conflict clause, 270–71
- conflict resolution, 132–33
- Congo, 2, 390
- Congress of Vienna, 231
- consequence, 295
- consistency
 - Elements of Crimes, 290–91, 293–94
 - horizontal, 34
 - presumption of, 408–09
 - vertical, 34
- constitutional international law
 - treaties, 81
- contextual interpretation, 51–52
- contra bonos mores*, 155
- contra proferentem* rule, 59
- contractual treaty, 81
- Control Council Law No. 10, 65–66, 162, 273
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (1984), 293, 355
- Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation* (1971), 308
- Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation* (1971), 308
- Convention on the Continental Shelf* (1958), 239
- Convention on the High Seas* (1958), 238
- Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents* (1973), 308
- Convention on the Prevention and Punishment of the Crime of Genocide* (1948). *See Genocide Convention* (1948)
- core crimes, 187, 308
- corrections, 74–76
- Côsta Rica v. Nicaragua*, 386
- Cote D'Ivoire, 2, 258
- counterterrorism, 252
- crimes, 269–86
 - core crimes, 187, 308
 - definitions of, 269–86
 - aggression, 271–74
 - crimes against humanity, 275–79
 - genocide, 274
 - in Rome Statute, 270–71, 341
 - war crimes, 279–86
 - elements of, 21–22
 - material elements of, 295
 - mental elements of, 295–301
 - most serious, 168–69
 - normative tensions in interpreting, 102–05
 - reclassification of, 162–65
 - in Rome Statute, 380–82
 - treaty crimes, 308–09, 313
- crimes against humanity, 275–79
 - apartheid, 278
 - definitions of, 317
 - ICTY statute's definition of, 11
 - jurisdiction, 16, 21
 - mental elements of, 299–301
 - persecution, 277–78

- crimes against humanity (*cont.*)
 - reservations, 324
 - Rome Statute's definition of, 278
 - sexual violence as, 277
 - States Parties, 331
 - threshold requirements, 275–76
 - torture, 276–77
- criminal responsibility, 189–90
- crucible approach, 43, 45–46
- crystallization, 374–75
- cultural genocide, 182
- custom, 220–45, 407–10
 - codification, 231–43
 - crystallization, 374–75
 - human rights and, 120
 - as interpretive aid, 175–76, 220–45, 349–57, 407–10
 - interpretive arguments, 223
 - intertemporality, 375–82
 - need for codification study, 221–31
 - role in Rome regime, 350–51
- customary international law, 61–63
 - Court's jurisdiction, 314
 - Rome Statute's relationship to, 313
 - Rome Statute presumption, 350–57
- Darfur, Sudan, 257, 334, 336
- Delalić* (1998), 59
- denunciations, 325–26
- deportation, 380
- design inadequacies, interpretive
 - problems, 16–18
- dialogue with judges, 79–80
- disappearance, enforced, 278, 292
- discovery, 376
- disputes, 79
- doctrinal writings, 339–43
- domestic criminal law, 102
- Draft Code (1951), 305
- Draft Code (1991), 306–07, 310–11
- Draft Code (1996), 306, 310–11
- Draft Code of Offences against Peace and Security of Mankind* (1996), 65
- Draft Statute (1953), 305–06
- Draft Statute (1991), 306
- Draft Statute (1993), 306, 307
- Draft Statute (1994), 306, 309–10
 - core crimes, 307–08
 - legality principle, 261
 - prohibition of, 323
 - treaty crimes, 308–09
 - war crimes, 283
- Draft Statutes of the Court, 227
- drafting
 - drafters' intent, 55–57, 225–26
 - errors, 20–21
 - history, 186–89, 303–17
 - of Rome Statute, 69–74
- Drafting Committee, 71, 72
- drug trafficking, 313
- East Timor, 335
- economic embargoes, 278
- Edward VI, 194
- Edwards v. Canada (Attorney General)* (1928), 25, 27
- effective interpretation, 54–55, 168–69, 184, 196–205
- Einsatzgruppen* case (1948), 162
- iusdem generis* rule, 50, 212
- Elements of Crimes, 21–22, 286–94
 - adoption of, 318
 - as aid to interpretation of crimes, 73–74
 - amendments, 289–90
 - applicable law, 262–63
 - codified deviation, 296–98
 - consistency requirements, 290–91, 293–94
 - consistency with Rome Statute, 229
 - crimes against humanity, 276, 279
 - crimes in Rome Statute, 381
 - customary law, 362–66
 - customary law presumption, 351
 - as decoder of archaic language in Statute, 291
 - as detail filler of vague/ambiguous terminology, 291
 - interpretation of articles 6, 7, 8, and 8 *bis*, 404–05
 - legality principle and, 189
 - mental elements of crimes, 295–96
 - principle of legality and, 289
 - restrictive imperatives of, 292
 - treaty law and, 359–60
 - working group on, 316
- enforced disappearance, 278, 292
- enforced fertilization, 277
- enforced prostitution, 277
- English language, 396, 418

- enslavement, 331, 362–66
erga omnes obligation, 249–50, 270
 errors, drafting, 20–21
 ethnic cleansing, 20
 European Commission, 172
European Convention on Human Rights (1950), 118, 170–71, 385
 European Court of Human Rights, 67, 109, 111, 139, 151–52, 155, 166, 170–71, 173–74, 197, 338, 384–85
 expert materials, 65
expressio unius rule, 50, 54, 355, 408
 extermination, 292, 331
 external indicia of codification, 303–44. *See also* internal indicia of codification
 conduct of Non-States Parties, 333–36
 conduct of States Parties, 328–33
 denunciations, 325–26
 doctrinal writings, 339–43
 drafting history, 303–17
 jurisprudence, 337–39
 ratifications, 318–20
 reservations, 320–25
 revisions, 326–28
 fair notice, 137–41. *See also* legality principle
 fair warning, 399
 fairness to the accused, 58–60
 favouring the accused, 205–08, 218–19, 401
 fertilization, enforced, 277
 Final Act of the Rome Conference, 73, 253
Fisheries Case, 335, 336
 forced pregnancy, 277, 299
 France, 324, 381, 390
 French language, 396, 418
 gap filling, 6–8
 General Assembly Resolution 3314 (XXIX), 271, 272, 317, 355, 373, 383–84, 405, 415, 416
 general principles of law, 178–81, 360–61, 411
Geneva Convention Relative to the Treatment of Prisoners of War (1929), 260
Geneva Conventions (1929), 178, 260
Geneva Conventions on the Laws of War (1949), 9, 22–23
 article 118, 388–89
 article 147, 353
 article 49, 128
 codification, 239
 definitions of key terms in, 12–13
 grave breaches of, 16, 38, 281–82, 308, 362
 illegality of certain conduct in, 160
 protected persons, 58
 subsequent practice, 389
 war crimes, 280, 332
 genocide, 1, 10–11, 274, 299, 304, 324, 330–31, 362, 363–65. *See also* crimes against humanity
Genocide Convention (1948), 1, 10, 56, 182, 233, 274, 293, 299, 304, 330–31, 385
Genocide Decision (2007), 1
 German Constitutional Court, 180
 German Criminal Code, 155
 Guidelines on Reservations to a Provision Reflecting a Customary Norm (2007), 321
 Gulf War (1991), 389
Hague Convention (IV) Respecting the Laws and Customs of War on Land (1907), 259
Hague Conventions (1899), 280
Hague Conventions (1907), 159, 178, 280, 375
 Hale, Baroness, 385–86
 hate speech, 413
 Heller, Kevin Jon, 368
 Henry VIII, 194
 Higher Court of Düsseldorf, 182
 Hobbes, Thomas, 14
 horizontal consistency, 34
 House of Lords, 165, 190
 human rights
 international laws, 102–04, 130
 internationally recognized, 117, 123, 125, 126–27, 412–14
 standards, 58–60

Cambridge University Press

978-1-107-06772-1 - Interpreting Crimes in the Rome Statute of the International Criminal Court

Leena Grover

Index

[More information](#)

450

INDEX

- ignorantia juris nocet*, 139
- ILC Statute, 233, 235
- illegality, 159–62, 403
- immorality, 154–57
- in dubio pro reo* rule, 58, 205
- indeterminate directives, 143
- inherent indefiniteness, interpretive problems, 21
- innocence, presumption of, 351
- Institut de Droit International*, 231, 241, 329
- Inter-American Court of Human Rights, 171, 339
- internal indicia of codification, 246–302. *See also* external indicia of codification
 - applicable law, 262–63
 - definitions of crimes, 269–86
 - elements of crimes, 286–94
 - legality, 259–62
 - material jurisdiction, 246–50
 - mental elements of crimes, 295–301
 - personal jurisdiction, 250–56
 - Rome Statute's relationship to international law, 263–69
 - temporal jurisdiction, 256–59
- internal structure, interpretive problems, 15–16
- International Committee of the Red Cross, 65, 71, 73, 133, 238, 264, 286, 294, 342, 395
- International Court of Justice (ICJ), 1, 196–97
 - codification, 238
 - definition of dispute, 79
 - jurisprudence, 67
 - North Sea Continental Shelf Case*, 239
 - Nuclear Weapons* advisory opinion (1996), 325
 - obligations *erga omnes*, 249
 - subsequent practice, 389–90
 - on systemic integration, 133
 - textual primacy, 111
- International Covenant on Civil and Political Rights* (1966), 115, 122, 123, 174
 - article 15, 178–81
- International Criminal Code, 322–23
- International Criminal Court, 106, 124, 396
 - complementarity issue, 140
 - dialogue with judges, 79–80
 - inadmissible cases, 84
 - interpretation, 1
 - jurisdiction, 3
 - legitimacy factor, 2
 - nature of, 80–84
 - political restraint, 79–80
 - selection and removal of judges, 84–88
- Vienna Convention* (1969) articles 31–33 and, 40
- without prejudice clause, 266
- international criminal law, 102
 - development of, 315
 - vs. domestic criminal sanctions, 106
 - encrustation of, 268
 - interpretative principles, 221
 - normative tensions, 102–05
 - strict legality and, 104
 - substantive justice origins and, 104
- International Criminal Tribunal for Rwanda (ICTR), 12–13, 38–39
 - aids to interpretation, 64–68
 - charters for international military tribunals, 67
 - customary law, 66
 - domestic legal instruments and decisions, 65–66
 - European Court of Human Rights jurisprudence, 67
 - expert materials, 65
 - International Court of Justice jurisprudence, 67
 - jurisprudence, 66
 - preparatory works for statutes, 66–67
 - treaty law, 67
- background principles, 14–15
- crimes against humanity and, 11
- genocide and, 10–11
- inadequate design and, 16–18
- interpretive principles and arguments, 49–64
 - contextual interpretation, 51–52
 - customary international law, 61–63

- drafters' intent, 55–57
 - effective interpretation, 54–55
 - fairness to the accused, 58–60
 - human rights standards, 58–60
 - literal interpretation, 49–50
 - logical interpretation, 50–51
 - progressive interpretation, 57
 - purposive interpretation, 53–54
 - textual interpretation, 111, 398–99
- interpretive problems, 9
- jurisprudence of, 48–68
 - aids to interpretation, 64–68
 - interpretive principles and arguments, 49–64
- selection and removal of judges, 84–88
- Vienna Convention* (1969) articles 31–33 and, 2
- International Criminal Tribunal for the Former Yugoslavia (ICTY), 38–39
- aids to interpretation, 64–68
 - charters for international military tribunals, 67
 - customary law, 66
 - domestic legal instruments and decisions, 65–66
 - European Court of Human Rights jurisprudence, 67
 - expert materials, 65
 - International Court of Justice jurisprudence, 67
 - jurisprudence, 66
 - preparatory works for statutes, 66–67
 - treaty law, 67
- Appeals Chamber, 159–60, 261
- article 3, 17
- articles 2 and 3 of, 16
- background principles, 14–15
- crimes against humanity and, 11
- genocide and, 10–11
- on immorality, 154
- inadequate design and, 16–18
- interpretive principles and arguments, 49–64
- contextual interpretation, 51–52
- customary international law, 61–63
- drafters' intent, 55–57
- effective interpretation, 54–55
- fairness to the accused, 58–60
- human rights standards, 58–60
- literal interpretation, 49–50
- logical interpretation, 50–51
- progressive interpretation, 57
- purposive interpretation, 53–54
- interpretive problems, 1, 9
- jurisprudence of, 48–68
 - aids to interpretation, 64–68
 - interpretive principles and arguments, 49–64
- jurisprudential consistency, 362–63
- linguistic interpretive issues, 12–13
- Prosecutor v. Delalić and Others* (1998), 197–98
- purposive or teleological reasoning, 167
- on reclassification of offences, 163
- Report of the UN Secretary-General on, 260
- selection and removal of judges, 84–88
- strict constriction, 197–98
- value conflicts and, 18–19
- Vienna Convention* (1969) articles 31–33 and, 40
- international criminal tribunals, 61–63, 105
- international human rights, 117, 123, 125, 126–27, 413
- international human rights law, 102–04
 - harmonization with Rome Statute, 130
- international humanitarian law, 102, 125, 341
 - harmonization with Rome Statute, 130
 - humanizing effect of international human rights of, 103, 125–26
 - multilateral treaties, 260
 - parent norms, 354
- international law
 - applicable rules, 407
 - custom, 407–10
 - general principles, 411
 - internationally recognized human rights, 412–14

- international law (*cont.*)
 - judicial decisions and teachings of publicists, 411–12
 - treaty law, 410
 - customary, 61–63
 - Rome Statute's relationship to, 263–69
- International Law Association (ILA), 231
- International Law Commission (ILC), 42
 - codification, 232
 - Draft Code (1991), 306
 - Draft Code (1996), 65, 310–11
 - Draft Statute (1991), 306
 - Draft Statute (1993), 227, 307
 - Draft Statute (1994), 70, 227, 261, 307–08, 309–10
 - establishment of, 232–34
 - general principles, 178
 - interpretive understandings or declarations, 369–71
 - legality principle, 186
 - on *lex specialis* rule, 131
 - mandatory guidelines, 44–45
 - Nuremberg principles, 305
 - reservations, 321, 322
 - revised Draft Code in 1954, 306
 - treaty term, 386
- international military tribunals (IMTs), 67
- internationally recognized human rights, 61–63, 105, 112–33, 412–14
- interpretation, 3
 - aids to, 64–68
 - contextual, 51–52
 - effective, 54–55
 - vs. gap filling, 6–8
 - literal, 49–50
 - logical, 50–51
 - operative, 3–6
 - progressive, 57
 - purposive, 53–54
- Interpretation Act* (1889), 26
- interpretive aids, 64–68, 89–101, 174–82. *See* aids to interpretation
- interpretive principles and arguments, 49–64, 102–33
 - contextual interpretation, 51–52
 - customary international law, 61–63
 - drafters' intent, 55–57
 - effective interpretation, 54–55
 - fairness to the accused, 58–60
 - human rights standards, 58–60
 - literal interpretation, 49–50
 - logical interpretation, 50–51
 - normative tensions in interpretation of crimes, 102–05
 - progressive interpretation, 57
 - purposive interpretation, 53–54
 - textual interpretation, 111, 398–99
- interpretive problems, sources of, 8–24
 - background principles, 14–15
 - customary law, 23–24
 - drafting errors, 20–21
 - Elements of Crimes, 21–22
 - inadequate design, 16–18
 - inherent indefiniteness, 21
 - internal structure, 15–16
 - inter-treaty relationships, 22–23
 - linguistic, 10–14
 - methodology, 19–20
 - special features of the case, 20
 - subsequent agreements, practice and law, 24
 - value conflicts, 18–19
- interpretive Understandings, 366–73, 404–05
- intertemporality, 375–82
- invalidation, 77–78
- invasions, 273
- Iran, 348
- Iraq, 333, 335, 336
- Iraqi Special Tribunal, 335
- Island of Palmas* arbitration (1928), 376
- Israel, 293, 333
- Jiménez de Aréchaga, Eduardo, 377
- joint criminal enterprise, 163
- Jorgić* (1997), 181, 182
- judges, selection and removal of, 84–88
- judicial decisions, 361–63, 411–12
 - as interpretive aid, 181–82

- jurisdiction
 - material, 246–50
 - personal, 250–56
 - temporal, 256–59
- jurisprudence, 337–39
- jus cogens*, 78, 248, 250, 269, 321, 326
- jus dispositivum*, 321, 326
- Kampala, Uganda, 337
- Katanga* (2008), 339
- Kellogg-Briand Pact (1928), 159
- Kenya, 2
- Kirsch, Philippe, 340
- Korbely v. Hungary* (2008), 338
- Korean War, 389
- Kunarac* (2002), 57
- landmines, 285
- languages, 396–97
- laws
 - customary, 23–24, 350–63, 366
 - general principles, 178–81, 360–61, 411
 - international, 61–63, 263–69, 407
 - rule of, 33, 141–42, 143–45, 399
 - treaty law, 357–60, 410
- Lee, Roy S., 341
- legal methodology, 2, 24–28
 - international dimension, 28–31
 - logical progression, 31–32
 - method for developing, 28–32
- legal presumption, 351–52, 408
- legality principle, 134–85, 259–62, 398–400
 - ambiguity, 205–08, 401
 - analogous reasoning, 208–16, 401–02
- applicable law, 174–85
- arguments undermining, 151–85, 402–03
 - criminal law in a changing world, 165–67, 403
 - essence of offence, 173–74
 - foreseeability and accessibility, 170–73, 403
 - higher order justice, 152–54, 402
 - illegality, 159–62, 403
 - immorality, 154–57, 402
- interpretive aids, 174–82
 - purposive or teleological reasoning, 167–69, 403
 - reclassification of offences, 162–65, 403
 - world order, 157–59, 402
- criminal responsibility, 189–90
- definition of, 136
- drafting history, 186–219
- Elements of Crimes and, 289
- fair warning, 399
- favouring the accused, 205–08
- International Covenant on Civil and Political Rights* (1966), 174–83
- interests protected by, 137–51
 - fair notice, 137–41
 - rule of law, 141–45
 - separation of powers, 145–49
 - prior law as basis for punishment, 149–51
- internationally recognized human rights and, 112–24, 413
- interpretive devices for safeguarding, 400
- justifications for, 399–400
- legality without prejudice, 216
- non-retroactivity, 190–92
- operationalizing, 186–219
- power of legislator and, 108–09
- prohibitions, 108
- qualifications, 109–10
- rule of law, 399
- separation of powers, 399
- strict construction, 192–205, 217–18, 400–01
 - substantive justice and, 402
- temporal jurisdiction and, 257
- without prejudice, 216
- legitimacy, 3, 142
- lex generalis*, 348
- lex posterior* principle, 223, 288
- lex specialis* rule, 130–32, 223, 288, 348
- lex superior* principle, 223, 288
- Libya, 2, 333
- Like-Minded Group (LMG), 71
- literal interpretation, 49–50
- Lubanga* (2009), 189
- Lubanga* Decision on Confirmation of Charges (2007), 301

Cambridge University Press

978-1-107-06772-1 - Interpreting Crimes in the Rome Statute of the International Criminal Court

Leena Grover

Index

[More information](#)

454

INDEX

- Martens Clause, 153
- mass starvation, 278
- material jurisdiction, 246–50
- McBoyle v. United States* (1931), 193
- mental requirements, 17, 298–99
- mental elements of crime, 295–301
- mercenaries, 272
- methodology, interpretive problems, 19–20
- methodology, of study, 28–33
- Middle East, 390
- modes of participation, 16
- morality, 402
- Nahimana and Others* (2007), 60
- Namibia* (1971), 253, 389
- nationality, 251
- Nazi, 208
- ne bis in idem* doctrine, 165
- Netherlands, 333, 376
- New Zealand, 333
- Nicaragua* judgment (1986), 240, 241
- non-aligned movement (NAM), 71
- non-governmental organizations (NGOs), 70, 86
- non-retroactivity, 190–92
- Non-States Parties, 333–37
- normative tensions, 102–05
- North Atlantic Treaty Organization (NATO), 336
- North Sea Conference (1881), 335, 336
- North Sea Continental Shelf* cases (1969), 239, 318, 320, 321, 328, 374
- Norway, 335, 336
- noscitur a sociis*, 50
- nuclear weapons, 285
- Nuclear Weapons* advisory opinion (1996), 319, 325
- nulla poena sine lege* principle, 141
- nullum crimen sine lege* principle, 61, 156, 177, 187–88, 260, 289
- Nuremberg Charter, 74, 273, 304
- Nuremberg principles, 305
- Nuremberg War Crimes Tribunal, 62, 104–05, 152–53, 154, 159, 259–60, 271
- offences
 - essence of, 173–74
 - reclassification of, 162–65, 403
- official languages, 396, 418
- Oil Platforms* case (2003), 348
- Okçuoglu v. Turkey* (1999), 214
- operative interpretation, 3–6
- opinio juris*, 120, 319–20, 337–38, 384, 404, 415
- Ozaki, Kuniko, 88
- Palestine, 258
- parent norms, 354
- peacekeeping missions, 335–36
- Permanent Court of International Justice, 196, 333
- persecution, 277, 299, 331, 362–66
- personal jurisdiction, 250–56
- persons of unsound mind, 385
- Polish codification, 237
- political constraint, 79–80
- powers, separation of, 145–49, 399. *See also* legality principle
 - challenges to, 147–49
 - liberty and, 146
- pregnancy, forced, 277, 299
- Preparatory Commission, 70, 73, 253, 286, 289, 294, 316, 317, 318
- Preparatory Committee, 117, 187–216, 264, 265, 306, 311–13, 315, 323
- preparatory works, 66–67, 416–18
- President of the Court, 287
- presumption of innocence, 351
- Pre-Trial Chamber of the Court, 289, 339, 363–65
- preventive torture, 113
- primary interpretive principle, 40
- principle of legality. *See* legality principle
- prisoners of war, 388–89
- Privy Council, 26–27
- procès-verbaux*, 75
- progressive interpretation, 57
- proprio motu* investigations, 258–59
- Prosecutor v. Akayesu* (1998), 207
- Prosecutor v. Aleksovski* (2000), 181, 182, 213–14
- Prosecutor v. Brima, Kamara and Kanu* (2008), 127

- Prosecutor v. Delalić and Others* (1998), 178, 197–98, 206
- Prosecutor v. Erdemović* (1997), 18
- Prosecutor v. Furundžija* (1998), 167–69, 179, 337–38
- Prosecutor v. Galić* (2006), 177, 338
- Prosecutor v. Gotovina* (2007), 127–28
- Prosecutor v. Hadžihasanović and Others* (1995), 161
- Prosecutor v. Kupreškić and Others* (2000), 204, 338
- Prosecutor v. Norman* (1995), 156–57
- Prosecutor v. Tadić* (1995), 16, 18, 22, 24, 57, 62, 177, 213, 221–22, 261, 280–81, 338, 379
- prostitution, enforced, 277
- protected person, 12–13, 58, 292, 300
- Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf* (1988), 308
- protracted armed conflict, 285
- public international law treaties, 81
- publicists’ teachings, 361–63, 411–12
 - as interpretive aids, 181, 182
- punishment, prior law as basis for, 149–50
- purposive interpretation, 53–54
- Qatar, 333
- rape, 207, 331, 380
- ratifications, 318–20
- Re List and Others (Hostages Trial)* (1948), 248
- reclassification of offences, 162–65
- reductio ad absurdum*, 50
- Regina v. Withers*, 165
- reservations, 320–25
 - prohibition of, 323
- Review Conference of the Rome Statute, 254–55, 269, 273, 285, 325, 327, 367–68
- revisions, 326–28
- Rights of Passage (Preliminary Objections) case (1957), 121
- rights of the accused, 12
 - Rome Diplomatic Conference, 70, 106, 117, 146, 186, 250, 253, 265, 296, 313–15, 324, 333, 343
 - Rome regime, 68–69
 - custom’s role in, 350–51
 - Rome Statute of the International Criminal Court, 2
 - adoption of, 318
 - articles
 - 5, 246–50, 253
 - 5(2), 327
 - 5–8 *bis*, 269–86
 - 6, 295, 298, 300, 314, 323, 326, 363, 366, 381, 404, 414
 - 69(7), 117
 - 7, 295, 298, 300, 314, 323, 326, 363, 366, 381, 404, 414
 - 7(1)(g), 143, 277
 - 7(1)(h), 277–78, 338
 - 7(1)(i), 339
 - 7(1)(k), 143, 212–13
 - 7(2)(a), 276
 - 7(2)(i), 339
 - 8, 279, 295, 298, 300, 314, 323, 326, 363, 366, 381, 404, 414
 - 8 *bis*, 298, 300, 326, 363, 366, 381, 384, 404, 414–15
 - 8(1), 247, 279
 - 8(2)(a)(i), 353
 - 8(2)(b), 283, 285, 292
 - 8(2)(c), 283
 - 8(2)(e), 283, 286, 327
 - 8(2)(f), 283
 - 86, 80
 - 8(b)(1v), 143
 - 9, 287–88, 333
 - 9(1), 5, 228
 - 9(2), 228
 - 9(3), 229
 - 10, 263–69, 314, 338, 356, 380
 - 11, 191, 256–59
 - 12, 250–56
 - 13, 250–56
 - 15 *bis*, 255–56
 - 15 *ter*, 256
 - 17(1), 83
 - 19(1), 79
 - 21, 6–8, 226–28, 262–63, 350, 361
 - 21(1), 175, 262–63

Cambridge University Press

978-1-107-06772-1 - Interpreting Crimes in the Rome Statute of the International Criminal Court

Leena Grover

Index

[More information](#)

456

INDEX

Rome Statute of the International Criminal Court (*cont.*)

- 21(1)(a), 287–88, 364, 365
- 21(1)(b), 380
- 21(1)(c), 360
- 21(2), 112, 214–15, 388
- 21(3), 5, 78, 112–17, 119–24, 226, 277–78, 365, 380
- 22, 106–12, 119–24, 154, 226, 381
- 22(1), 257, 259–62, 380
- 22(2), 5, 114, 206, 356, 365, 418
- 22(3), 166, 216, 263–69, 380
- 24, 191, 256–59
- 24(2), 380
- 30, 295–301
- 30(1), 228, 295
- 30(2), 295
- 30(3), 295
- 32(3), 138
- 98(1), 336
- 112(7), 369
- 119(1), 79
- 120, 322–23
- 121(4), 327
- 121(5), 326–28
- 124, 324
- 128, 396, 418–19
- articles and substantive crimes, 83
- conflict clause, 271
- crimes in, 380–82
- customary law presumption, 350–57
- division of powers, 74–78
 - amendments, 76–77
 - corrections, 74–76, 326–28
 - invalidation, 77–78
- drafting of, 69–74, 303–17
- Elements of Crimes
 - as decoder of archaic language in, 291
 - and custom, 221–23, 228–29
 - consistent with Rome Statute, 287–95
 - interpretive aid, 363–66, 404–05
 - otherwise provide (mental element), 295–301
- evidence, 106–07
- gap filling, 6–8

- International Criminal Court's
 - jurisdiction and, 3
 - international law's relationship to, 263–69
 - internationally recognized human rights, 112–19
 - interpretation of, 129
 - interpretive principles, 102–33
 - nature of, 80–84
 - normative tensions within, 102–06
 - objects and purpose of, 168–69
 - principle of legality, 106–12, 134–85
 - reconciliation of article 21(3) and 22, 119–24
 - selection and removal of judges, 84–88
 - sources of interpretive problems, 8–24
 - States Parties to, 2
 - super-legality of, 113–14
 - systemic integration dilemma, 124–33
- rule of law, 33, 141–45, 399. *See also*
 - legality principle
 - arbitrariness and, 141–42
 - challenges to, 143–45
 - legitimacy and, 3, 142
- Rules of Procedure and Evidence, 107, 200
- Saland, Per, 187
- Secretary-General, 85, 260
- Security Council
 - amendments to ICTY and ICTR statutes, 76
 - crimes against humanity and, 324
 - crimes on territory of Non-State Party and, 230
 - customary status of crimes, 334
 - deferral of proceedings, 258
 - dialogue with ICTY and ICTR judges, 79
 - international peace and security measures, 18
 - nominees, 85
 - non-procedural decisions, 389
 - referrals, 192, 251, 252–53, 257–58
 - Rome Statute and, 23, 69
 - UN peacekeepers and, 335–36

- separation of powers, 145–49, 399. *See also* legality principle
 challenges to, 147–49
 liberty and, 146
- Sexual Offences (Amendment) Act of 1976, 170
- sexual slavery, 277, 300. *See also* crimes against humanity
- sexual violence crimes, 277, 292, 300, 331, 362
- Shaw v. Director of Public Prosecutions* (1961), 209
- Simić* (2006), 57
- sovereignty, 140
- Spain, 376
- Special Court for Sierra Leone, 62, 127, 156
- special meaning of ‘ordinary’ word, 382–86, 415–17
- Special Tribunal for Lebanon, 134, 160, 191
- Special Working Group on the Crime of Aggression, 254, 272–73, 317, 394, 417
- Stakić* (2002), 212
- Star Chamber, 155
- stare decisis* principle, 66, 211–12, 213–14
- State v. Buckham* (1836), 209
- States
 conduct of, 328–37
 Parties, 329–33
- Statute of the International Court of Justice, 120, 139, 383, 415
- Statute of the International Law Commission (ILC Statute), 233, 235
- statutory laws, 211
- strict construction, 164, 192–205, 217–18, 400–01
 abandoning, 201
 international history, 196–205
 national history, 193–96
- strict legality doctrine, 104
- subsequent practice, 24, 387–92, 405–06
- substantive justice doctrine, 104, 402
- Sudan, 2, 257
- Summers, Robert, 9
- super-legality, 113–14
- Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery* (1956), 300
- supplementary means of interpretation, 345–46, 392–95, 417–18
- SW v. United Kingdom* (1995), 109, 170
- systemic integration, master-key analogy, 129
- Tadić Jurisdiction Decision*, 105
- teachings of publicists, 182–83, 361–63, 412–13
- teleological reasoning, 167–69, 403
- temporal jurisdiction, 256–59
- territoriality, 251
- terrorism, 278
- textual primacy, 111–12, 399
- Tokyo War Crimes Trials, 104–05, 260
- torture, 113
 as crime against humanity, 276–77
 customary law requirements, 355
travaux préparatoires, 73, 293, 393, 395, 399
- treaties
 authenticated in two or more languages, 396–97
 contractual, 81
 denunciation of, 325–26
 as interpretive aid, 176–78
 law-making, 81–82
 Non-States Parties, 333–37
 objects and purpose of, 168–69
 ordinary international law, 81
 public or constitutional international law, 81
 rebuttable presumption of, 352
 special meanings of ‘ordinary words’ in, 382–86
- treaty crimes, 308–09, 313
- treaty law, 357–60, 410
- Treaty of Amity Economic Relations and Consular Rights (Article II)* (1955), 348
- Tryer v. United Kingdom* (1978), 384–85

Cambridge University Press

978-1-107-06772-1 - Interpreting Crimes in the Rome Statute of the International Criminal Court

Leena Grover

Index

[More information](#)

458

INDEX

- Uganda, 2
- Understandings in Kampala, 369
- United Kingdom, 335
- United Nations, 117
 - acts against personnel of, 284, 300
 - peacekeeping missions, 335–36
- United Nations Charter, 232, 367–68
 - article 17(2), 390
 - article 27(3), 389
- United Nations General Assembly, 232, 271–72, 304–05, 307
- United Nations Human Rights Committee, 171
- United Nations Secretary-General, 260
- United States, 269, 333, 335–36, 348, 376
- United States Constitution (1798), 190
- Universal Declaration of Human Rights* (1948), 118
- unstated assumptions, 9
- Updated Siracusa Draft (1996), 322–23
- USSR, 390

- value conflicts, 18–19
- vertical consistency, 34
- Victims Trust Fund, 80
- Vienna Convention on the Law of Treaties* (1969), 32, 39–47, 345–97
 - analogous reasoning, 402
 - articles
 - 9(2), 318
 - 20, 322
 - 20(3), 322
 - 30(2), 121–22
 - 31, 111–12, 114, 202, 345, 365, 370–72, 383, 392, 393, 394, 395, 417
 - 31(1), 207, 215, 379, 383, 400–15:
 - ambiguity, 401; analogous reasoning, 402; favouring the accused, 401; interpretive devices for safeguarding legality, 400; legality, 398–400; strict construction, 400–01
 - 31(2), 370, 404
 - 31(2)(a), 370
 - 31(2)(b), 370
 - 31(3), 24, 124, 128, 148, 200, 229–30, 365, 370, 373–74, 391
 - 31–33, 19–20, 28–29, 36–37, 39–47, 168, 392
 - 31(3)(a), 288, 346–49, 358, 363, 370, 371, 384, 404–05, 416
 - 31(3)(b), 387–92, 405–07
 - 31(3)(c), 224–25, 241, 346–49, 356, 358, 360, 361, 379, 380, 384, 387, 407, 416
 - 31(4), 223, 370, 373–74, 382–86, 414–16
 - 32, 114–15, 208, 345–46, 365, 370, 383, 392–95, 416–18
 - 32(a), 394
 - 32(b), 393
 - 33, 346, 396–97, 418–19
 - 33(3), 396, 418
 - 33(4), 396, 418
 - 34, 334
 - 35(1), 252
 - 36(1), 252
 - 38, 241
 - 43, 241, 325
 - 46(2), 393
 - 53, 78
 - 64, 389
 - authenticated texts, 418–19
 - context, 404
 - crimes in Rome Statute, 380–82
 - crucible approach to interpretation, 83
 - crystallization, 374–75
 - customary law, 349–50
 - elements of crimes, 362–66
 - general principles of law, 360–61
 - interpretive understandings, 366–73
 - judicial decisions and teachings of publicists, 361–63
 - Rome Statute presumption, 350–57
 - treaty law, 357–60
 - general rule of interpretation, 345, 399
 - interpretation of treaties
 - authenticated in two or more languages, 346

Cambridge University Press

978-1-107-06772-1 - Interpreting Crimes in the Rome Statute of the International Criminal Court

Leena Grover

Index

[More information](#)

INDEX

459

- interpretive principles and
 - arguments, 49–64
 - contextual interpretation, 51–52
 - customary international law, 61–63
 - drafters' intent, 55–57
 - effective interpretation, 54–55
 - fairness to the accused, 58–60
 - human rights standards, 58–60
 - literal interpretation, 49–50
 - logical interpretation, 50–51
 - progressive interpretation, 57
 - purposive interpretation, 53–54
- intertemporality, 375
- legality, 398–400
- legality principle, 31
- levels of assistance in interpretation, 40
- mandatory guidelines, 44–45
- preparatory works, 416–18
- primary interpretive principle, 40
- Rome Statute customary law
 - presumption, 350
- rules of interpretation, 38
- special meanings of 'ordinary words', 382–86
- strict construction, 400–01
- subsequent practice, 387–92, 405–07
- supplementary means of
 - interpretation, 345–46, 392–95
- terms with special meanings, 414–16
- treaties authenticated in two or more
 - languages, 396–97
- without prejudice clause, 266
- von Hebel, Herman, 340–41
- Von Leeb and Others (High Command)*
 - case (1948), 260
- Waldock, Humphrey, 365, 370–72, 377–78
- Waldron, Jeremy, 33
- war crimes, 279–86, 317
 - chapeau provisions, 282
 - inclusion in Rome Statute, 284
 - mental elements of, 300
 - States Parties, 331–32
- war crimes trials, 104–05
- weapons, 166, 285
- Working Group on Amendments, 77
- Working Group on Elements of Crimes, 316
- world order, 157–59, 402
- World Trade Organization, Appellate Body, 111, 168
- Wróblewski, Jerzy, 9
- Yemen, 333