

Cambridge University Press

978-1-108-49930-9 — The Jurisdiction of the International Criminal Court over Nationals of Non-States Parties

Monique Cormier

Frontmatter

[More Information](#)

THE JURISDICTION
OF THE INTERNATIONAL CRIMINAL
COURT OVER NATIONALS OF
NON-STATES PARTIES

This book provides a systematic and comprehensive analysis of the ICC's jurisdiction over nationals of non-States Parties. It is within the context of developments at the Court in recent years that this work addresses the overarching question: On what legal basis is the ICC authorised to exercise jurisdiction over nationals of non-States Parties? Engaging with ICC jurisprudence and building upon arguments developed in legal scholarship, this book explores the theory of delegated jurisdiction and critically examines the idea that the Court might alternatively be exercising jurisdiction inherent to the international community. It argues that delegation of territorial jurisdiction and implied consent by virtue of UN membership provide a legal basis to allow the ICC to exercise jurisdiction over nationals of non-States Parties in almost all situations envisaged by the Rome Statute.

Monique Cormier is a Lecturer at the University of New England School of Law in New South Wales, Australia. She was previously a Research Fellow at Melbourne Law School and received her doctorate from the University of Melbourne.

Cambridge University Press

978-1-108-49930-9 — The Jurisdiction of the International Criminal Court over Nationals of Non-States Parties

Monique Cormier

Frontmatter

[More Information](#)

THE JURISDICTION
OF THE INTERNATIONAL
CRIMINAL COURT OVER
NATIONALS
OF NON-STATES PARTIES

MONIQUE CORMIER

University of New England



Cambridge University Press

978-1-108-49930-9 — The Jurisdiction of the International Criminal Court over Nationals of Non-States Parties

Monique Cormier

Frontmatter

[More Information](#)

CAMBRIDGE UNIVERSITY PRESS

University Printing House, Cambridge CB2 8BS, 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

79 Anson Road, #06–04/06, Singapore 079906

Cambridge University Press is part of the University of Cambridge.

It furthers the University's mission by disseminating knowledge in the pursuit of education, learning, and research at the highest international levels of excellence.

www.cambridge.org

Information on this title: www.cambridge.org/9781108499309

DOI: 10.1017/9781108588706

© Monique Cormier 2020

This publication is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press.

First published 2020

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

Library of Congress Cataloging-in-Publication Data

Names: Cormier, Monique (Law teacher) author.

Title: 'The Jurisdiction of the International Criminal Court over Nationals of Non-States Parties' / Monique Cormier, University of New England, Australia.

Description: Cambridge, United Kingdom ; New York, NY, USA : Cambridge University Press, 2020. | Based on author's thesis (doctoral – University of Melbourne, 2017). | Includes bibliographical references and index.

Identifiers: LCCN 2020012176 (print) | LCCN 2020012177 (ebook) | ISBN 9781108499309 (hardback) | ISBN 9781108588706 (ebook)

Subjects: LCSH: International Criminal Court. | Criminal jurisdiction. | Jurisdiction (International law)

Classification: LCC KZ7375 .C67 2020 (print) | LCC KZ7375 (ebook) | DDC 345/.0122–dc23

LC record available at <https://lcn.loc.gov/2020012176>

LC ebook record available at <https://lcn.loc.gov/2020012177>

ISBN 978-1-108-49930-9 Hardback

Cambridge University Press has no responsibility for the persistence or accuracy of URLs for external or third-party internet websites referred to in this publication and does not guarantee that any content on such websites is, or will remain, accurate or appropriate.

CONTENTS

Foreword page xi
Acknowledgements xiii
Table of Cases xv
*Table of Treaties and Selected Other
Instruments* xxiii
List of Abbreviations xxvii

1 Introduction 1
 1.1 The Jurisdiction Provisions 2
 1.2 Context and Aims 4
 1.3 Structure 7

2 Questions of State Consent and Sovereignty 11
 2.1 Introduction 11
 2.2 Does the ICC’s Jurisdiction Infringe on the Sovereignty of Non-
 States Parties? 13
 2.2.1 The Rome Statute Violates the *Pacta Tertiis*
 Principle 14
 2.2.2 The Rome Statute Ignores the Importance of State
 Consent 18
 2.2.3 Complementarity as an Infringement on State
 Sovereignty 24
 2.2.4 Conclusion to Section 2.2 28
 2.3 The Rome Statute, Non-States Parties and Sovereignty 28
 2.3.1 Does the Rome Statute Infringe on State Sovereignty? Yes, No
 and Somewhat 29
 2.3.2 The Sovereignty Paradox 32
 2.3.3 What This Means for the ICC and Non-States
 Parties 34
 2.4 Conclusion 35

3	Delegation of Jurisdiction: The Concepts	36
3.1	Introduction	36
3.2	Delegation Debates in the Early Scholarship	40
3.2.1	Is It Lawful to Delegate Criminal Jurisdiction without the Consent of the State of Nationality?	40
3.2.1.1	Delegation of Jurisdiction among States	41
3.2.1.2	Delegation of Jurisdiction to an International Court	44
3.2.2	Delegation of Jurisdiction to an International Court Is Lawful	50
3.3	Delegation in International Law	50
3.3.1	The ICC as an International Organisation	51
3.3.2	How Do International Organisations Acquire Their Powers?	52
3.3.2.1	Typology of Conferral	54
3.3.2.2	Collective Conferral or Individual Delegation?	55
3.3.3	The ICC as an Atypical International Organisation	57
3.4	Jurisdiction in International Law	57
3.4.1	Jurisdiction to Prescribe (Adjudicate) and Enforce	59
3.4.2	Principles of Criminal Jurisdiction under International Law	61
3.4.2.1	Territoriality Principle	61
3.4.2.2	Extraterritorial Jurisdiction	63
3.4.3	Conclusion to Section 3.4	69
3.5	Conclusion	69
4	Delegation of Jurisdiction: Application and Limitations	71
4.1	Introduction	71
4.2	Is Delegation of Jurisdiction Affected by National Laws?	72
4.2.1	<i>The Lex Loci of State Party X</i>	73
4.3	Is Delegation of Jurisdiction Affected by Customary Immunities?	76
4.3.1	ICC Jurisdiction over Sitting Heads of Non-States Parties	76
4.3.2	Prosecuting Sitting Heads of State: Background	77
4.3.2.1	Head of State Immunity in Customary International Law	78
4.3.3	Head of State Immunity and the ICC	81

CONTENTS vii

4.3.3.1	Articles 27 and 98 of the Rome Statute	81
4.3.3.2	Consideration of Articles 27 and 98 in the Case of Al Bashir	84
4.3.4	A Hypothetical Case Study: Can the ICC Exercise Jurisdiction over an Incumbent Head of State from a Non-State Party in a Situation Not Involving the Security Council?	91
4.3.4.1	Is President X Immune from Arrest and Transfer?	91
4.3.4.2	Does Delegation of Jurisdiction Provide a Legal Basis for ICC Jurisdiction over President X?	93
4.3.5	Conclusion to Section 4.3	93
4.4	Is Delegation of Jurisdiction Affected by International Agreements?	94
4.4.1	The Situation in Afghanistan	94
4.4.1.1	Does the SOFA Limit Afghanistan's Ability to Delegate Jurisdiction?	96
4.4.1.2	The Conflict between the Rome Statute and the SOFA	97
4.4.1.3	Resolving the Conflict between the Statute and the SOFA	105
4.4.2	The Situation in Palestine	106
4.4.2.1	The Question of Statehood and Delegable Jurisdiction	108
4.4.2.2	Restriction of Palestine's Judicial Jurisdiction via the Oslo Accords	109
4.4.2.3	Does Delegation of Jurisdiction Provide a Legal Basis for ICC Jurisdiction over Israeli Nationals?	111
4.5	Conclusion	112
5	The UN Security Council, the ICC and Nationals of Non-States Parties	114
5.1	Introduction	114
5.2	The Role of the Security Council in the Rome Statute	116
5.3	The Negative Pillar: Excluding Jurisdiction	119
5.3.1	Article 16: The Deferral Power	119
5.3.1.1	Resolutions 1422 (2002) and 1487 (2003)	120
5.3.1.2	The Validity of Resolution 1422	123
5.3.2	Excluding Jurisdiction without Reference to the Rome Statute	125
5.3.2.1	Resolution 1497 and Article 98(2) of the Rome Statute	127

Cambridge University Press

978-1-108-49930-9 — The Jurisdiction of the International Criminal Court over Nationals of Non-States Parties

Monique Cormier

Frontmatter

[More Information](#)

5.3.2.2	Can Liberia Delegate Jurisdiction in Light of Resolution 1497?	128
5.3.3	Unorthodox and Unintended	130
5.4	The Positive Pillar: Enabling Jurisdiction	131
5.4.1	Article 13(b): The Referral Power	131
5.4.1.1	Resolution 1593: The Situation in Darfur	132
5.4.1.2	Resolution 1970: The Situation in Libya	135
5.4.2	Do Sudan and Libya Have Rights and Obligations under the Rome Statute?	137
5.4.3	What Is the Legal Basis for ICC Jurisdiction over Situations Referred by the Security Council?	139
5.4.3.1	The Security Council Empowers the Court	140
5.4.3.2	What Empowers the Security Council?	141
5.4.4	Implied Consent as a Legal Basis	151
5.5	The Hidden Pillar Revealed: The Crime of Aggression	152
5.5.1	The Jurisdiction Trigger	153
5.5.2	Determining the Existence of a Crime of Aggression	155
5.5.3	A Mixed Role for the Security Council	157
5.6	Conclusion	158
6	Universality as a Legal Basis for ICC Jurisdiction	159
6.1	Introduction	159
6.2	What is Universal Jurisdiction?	161
6.2.1	Three Types of Universal Jurisdiction	162
6.2.1.1	Representative or Vicarious Jurisdiction	162
6.2.1.2	Treaty-Based Universal Jurisdiction	162
6.2.1.3	Universal Jurisdiction in Customary International Law	164
6.2.2	'Universal Jurisdiction' in This Book	166
6.3	Universality and the Rome Statute	167
6.3.1	Is the Principle of Universality Precluded by the Statute?	167
6.3.2	Justiciability of Statute Crimes under Universal Jurisdiction	169
6.3.2.1	Genocide	170
6.3.2.2	Crimes Against Humanity	172
6.3.2.3	War Crimes	174

CONTENTS

ix

6.3.2.4	Aggression	177
6.3.3	Conclusion to Section 6.3	181
6.4	Universality as the Basis for ICC Jurisdiction	182
6.4.1	Universal Jurisdiction as Belonging to States	182
6.4.1.1	Delegation of Universal Jurisdiction	182
6.4.1.2	The Limits of Delegated Universal Jurisdiction	183
6.4.2	Universal Jurisdiction as Inherent to the International Community	185
6.4.2.1	The ICC as an Agent of the International Community	186
6.4.2.2	Inherent Universal Jurisdiction as a Legal Basis for ICC Jurisdiction over Nationals of Non-States Parties	188
6.4.2.3	The Limits of Inherent Universal Jurisdiction	190
6.4.3	Two Shortcomings	193
6.5	Conclusion	194
7	Concluding Remarks	196
	<i>Bibliography</i>	200
	<i>Index</i>	239

FOREWORD

Many of the past and present controversies surrounding the International Criminal Court proceed in some way from its jurisdiction over nationals of States not party to the Rome Statute, its constituent instrument. Preliminary examinations, investigations and cases involving alleged crimes by nationals of Israel, Myanmar, Russia, Sudan and the US have embroiled the Court in hotly disputed legal proceedings and exposed it to scathing and sometimes scandalous political attacks. In some of these instances, criticism of the Court has by no means been confined to non-States Parties.

To some, the ICC's jurisdiction over third-party nationals is the original sin from which other legal transgressions flow. To others, this same jurisdiction is but one legitimate incarnation of the '*jus puniendi*' of the international community'. To others still, the Court's jurisdiction over nationals of non-States Parties is no lesser or greater than the respective jurisdictions over crimes on their territories enjoyed by States Parties to the Rome Statute or is justified in its exercise in situations referred to the Court by the Security Council by a non-State Party's consent as a member of the United Nations, by way of Article 25 of the UN Charter. What is instead potentially problematic to these last is the overlay of the ICC's jurisdiction over third-party nationals with other international legal issues, such as the immunities of State officials from foreign criminal jurisdiction.

In *The Jurisdiction of the International Criminal Court over Nationals of Non-States Parties*, Monique Cormier, with a view to a cogent rationalisation of the ICC's competence with respect to allegations of crimes by nationals of States not party to the Rome Statute, subjects to scrutiny these different schools of thought and the many and varied international legal questions thrown up one way or another by this competence. The result, the product of deep and broad study of the primary and secondary sources, is a rich, expansive and at times provocative study with implications for many points of law currently before or likely to come before the

Cambridge University Press

978-1-108-49930-9 — The Jurisdiction of the International Criminal Court over Nationals of
Non-States Parties

Monique Cormier

Frontmatter

[More Information](#)

xii

FOREWORD

Court. It deserves to be read, and will amply reward reading, by anyone interested in international criminal law, the law of international organisations, the law of treaties or international legal understandings of sovereignty.

Roger O'Keefe

*Professor of International Law
Bocconi University, Milan*

Cambridge University Press

978-1-108-49930-9 — The Jurisdiction of the International Criminal Court over Nationals of Non-States Parties

Monique Cormier

Frontmatter

[More Information](#)

ACKNOWLEDGEMENTS

This book is a reviewed and updated version of my doctoral dissertation completed at the University of Melbourne, so the first vote of thanks must go to my PhD supervisors. Tim McCormack was an enthusiastic supporter of this project from the beginning and always willing to share his experience and insights on the situations before the International Criminal Court (ICC). Alison Duxbury was a dedicated supervisor and a supportive mentor and I particularly appreciated her expertise on international institutional law. I am also grateful for Alison's ongoing support during the preparation of my book manuscript. Thank you to Rain Liivoja, whose willingness to engage with the technicalities of international criminal jurisdiction assisted me greatly. The guidance, encouragement and good humour of my three supervisors sustained me throughout my candidature.

I am indebted to Roger O'Keefe and Roger Clark for examining my thesis and providing detailed and thoughtful comments that became a blueprint for revising and updating the text for publication. The reports from the anonymous Cambridge University Press reviewers were similarly invaluable.

The jurisdiction of the ICC over nationals of non-States Parties first caught my attention back in 2005 as an undergraduate at the University of Adelaide. I wrote my LLB Honours thesis on this topic under the dedicated supervision of Judith Gardam, unaware that I would still be preoccupied with this issue fifteen years later! I would also like to thank Gerry Simpson for introducing me to academia and encouraging me to pursue a PhD.

A number of colleagues read various versions of the manuscript, in whole or in part, and for that I would like to thank Cameron Moore and Samuli Haataja for their thoughts on specific chapters. Particular thanks must go to Carrie McDougall for her generous and detailed feedback on an earlier draft and to Rhys Ryan for his excellent research assistance.

Cambridge University Press

978-1-108-49930-9 — The Jurisdiction of the International Criminal Court over Nationals of Non-States Parties

Monique Cormier

Frontmatter

[More Information](#)

xiv

ACKNOWLEDGEMENTS

The University of New England School of Law has been my academic home for the past three years and I would like to acknowledge the School and my UNE colleagues for their support while I finalised the manuscript.

I have presented aspects of this research at various conferences and workshops over a number of years and wish to express my appreciation broadly to the participants at the Australian International Criminal Law workshops; the Australian and New Zealand Society of International Law conferences; the 2015 American Society of International Law ICL Workshop; and the Harvard Law School Visiting Researchers Colloquium in 2016.

I am fortunate to be part of a supportive scholarly community of Melbourne PhD alumni and would like to thank Anna Hood, Madelaine Chiam, Simon McKenzie, Kobi Leins, Cait Storr and Sophie Rigney for their camaraderie, inspiration and good advice.

Finally, I thank my family for their unwavering support and encouragement.

Cambridge University Press

978-1-108-49930-9 — The Jurisdiction of the International Criminal Court over Nationals of Non-States Parties

Monique Cormier

Frontmatter

[More Information](#)

TABLE OF CASES

Permanent Court of International Justice

SS Lotus (France v Turkey) (Judgment) [1927] PCIJ (Series A) No 10 49, 61, 63–64, 66–68

International Court of Justice

Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo (Advisory Opinion) [2010] ICJ Rep 403 151

Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Yugoslavia (Serbia and Montenegro)) (Preliminary Objections) [1996] ICJ Rep 595 171

Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v Belgium) (Judgment) [2002] ICJ Rep 3 22, 64, 67–68, 73, 77–78, 164–166

Certain Expenses of the United Nations (Advisory Opinion) [1962] ICJ Rep 151 142–143

Certain Questions of Mutual Assistance in Criminal Matters (Djibouti v France) (Judgment) [2008] ICJ Rep 177 80

East Timor (Portugal v Australia) (Judgment) [1995] ICJ Rep 90 13

Legality of the Use by a State of Nuclear Weapons in Armed Conflict (Advisory Opinion) [1996] ICJ Rep 66 52, 53

Military and Paramilitary Activities in and against Nicaragua (Nicaragua v US) (Merits) [1986] ICJ Rep 14 177

Monetary Gold Removed from Rome in 1943 (Italy v France) (Judgment) [1954] ICJ Rep 19 13, 23

Nottebohm Case (Liechtenstein v Guatemala) (Second Phase, Judgment) [1955] ICJ Rep 4 65

Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v United States of America) (Preliminary Objections) [1998] ICJ Rep 115 148

Questions Relating to the Obligation to Prosecute or Extradite (Belgium v Senegal) (Judgment) [2012] ICJ Rep 422 163

- Reparation for Injuries Suffered in the Service of the United Nations (Advisory Opinion)* [1949] ICJ Rep 174 52–53, 56, 93, 192
- Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide (Advisory Opinion)* [1951] ICJ Rep 15 170

International Criminal Tribunal for the Former Yugoslavia

- Prosecutor v Blaškić (Judgement on the Request for the Republic of Croatia for Review of the Decision of Trial Chamber II of 18 July 1997)* (International Criminal Tribunal for the former Yugoslavia, Appeals Chamber, Case No IT-95-14-AR-108, 29 October 1997) 78
- Prosecutor v Blaškić (Objection to the Issue of Subpoena Duces Tecum)* (International Criminal Tribunal for the former Yugoslavia, Appeals Chamber, Case No IT-95-14-AR-108, 18 July 1997) 79
- Prosecutor v Furundžija, (Judgement)* (International Criminal Tribunal for the former Yugoslavia, Trial Chamber, Case No IT-95-17/I-T, 10 December 1998) 171
- Prosecutor v Krnojelac (Judgement)* (International Criminal Tribunal for the former Yugoslavia, Trial Chamber, Case No IT-97-25, 15 March 2002) 173
- Prosecutor v Milošević (Indictment)* (Office of the Prosecutor, International Criminal Tribunal for the former Yugoslavia, Case No IT-99-37, 22 May 1999) 150
- Prosecutor v Milutinović (Decision on Motion Challenging Jurisdiction)* (International Criminal Tribunal for the former Yugoslavia, Trial Chamber, Case No IT-99-37-PT, 6 May 2003) 150–151
- Prosecutor v Tadić (Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction)* (International Criminal Tribunal for the former Yugoslavia, Appeals Chamber II, Case No ICTY-94-1-AR72, 2 October 1995) 143, 147, 171, 177, 198
- Prosecutor v Vasiljević (Judgement)* (International Criminal Tribunal for the former Yugoslavia, Trial Chamber II, Case No IT-98-32-T, 29 November 2002) 173

International Criminal Tribunal for Rwanda

- Prosecutor v Kanyabashi (Decision on the Defence Motion on Jurisdiction)* (International Criminal Tribunal for Rwanda, Trial Chamber II, Case No ICTR-96-15 T, 18 June 1997) 143
- Prosecutor v Ntuyahaga, (Decision on the Prosecutor's Motion to Withdraw the Indictment)* (International Criminal Tribunal for Rwanda, Trial Chamber I, Case No ICTR-90-40-T, 18 March 1999) 171

International Criminal Court

- Decision Assigning the Situation in Uganda to Pre-Trial Chamber II* (International Criminal Court, Presidency, Case No ICC-02/04, 5 July 2004) 135

TABLE OF CASES

xvii

- Decision on the constitution of Pre-Trial Chambers and on the assignment of the Democratic Republic of the Congo, Darfur, Sudan and Côte d'Ivoire situations* (International Criminal Court, the Presidency, Case No ICC-Pres-01-12, 15 March 2012) 86
- Prosecutor v Al Bashir (Decision on the Cooperation of the Democratic Republic of the Congo Regarding Omar Al Bashir's Arrest and Surrender to the Court)* (Pre-Trial Chamber II, Case No ICC/02/05-01/09, 9 April 2014) 86, 137, 140
- Prosecutor v Al Bashir (Decision pursuant to Article 87(7) of the Rome Statute on the Failure by the Republic of Malawi to Comply with the Cooperation Requests Issued by the Court with respect to the Arrest and Surrender of Omar Hassan Ahmad Al Bashir)* (Pre-Trial Chamber I, Case No ICC/02/05-01/09, 12 December 2011) 85
- Prosecutor v Al Bashir (Decision pursuant to Article 87(7) of the Rome Statute on the Failure by the Republic of Chad to Comply with the Cooperation Requests Issued by the Court with respect to the Arrest and Surrender of Omar Hassan Ahmad Al Bashir)* (Pre-Trial Chamber I, Case No ICC/02/05-01/09, 13 December 2011) 85
- Prosecutor v Al Bashir (Decision under article 87(7) of the Rome Statute on the non-compliance by Jordan with the request by the Court for the arrest and surrender of Omar Al-Bashir)* (International Criminal Court, Pre-Trial Chamber II, Case No ICC/02/05-01/09, 11 December 2017) 87
- Prosecutor v Al Bashir (Decision under article 87(7) of the Rome Statute on the non-compliance by South Africa with the request by the Court for the arrest and surrender of Omar Al-Bashir)* (International Criminal Court, Pre-Trial Chamber II, Case No ICC/02/05-01/09, 6 July 2017) 87
- Prosecutor v Al Bashir (Joint Concurring Opinion of Judges Eboe-Osuji, Morrison, Hofmański and Bossa)* (International Criminal Court, Appeals Chamber, Case No ICC/02/05-01/09, 6 May 2019) 87-91, 184, 192
- Prosecutor v Al Bashir (Judgment in the Jordan Referral re Al-Bashir Appeal)* (International Criminal Court, Appeals Chamber, Case No ICC/02/05-01/09, 6 May 2019) 57, 87-90, 133, 137, 139, 193, 198
- Prosecutor v Al Bashir (Order Regarding Omar Al-Bashir's Potential Visit to the Republic of Chad and to the State of Libya)* (International Criminal Court, Pre-Trial Chamber II, Case No ICC-02/05-01/09, 15 February 2013) 86, 133
- Prosecutor v Al Bashir (Warrant of Arrest)* (International Criminal Court, Pre-Trial Chamber I, Case No ICC-02/05-01/09, 4 March 2009) 74, 82, 84, 133, 137-138, 152
- Prosecutor v Gbagbo (Judgment on the Appeal of Mr Laurent Koudou Gbagbo against the Decision of Pre-Trial Chamber I on Jurisdiction and Stay of Proceedings)* (International Criminal Court, Appeals Chamber, Case No ICC-02/11-01/11, 12 December 2012) 34
- Prosecutor v Harun and Abd-Al-Rahman (Warrant of Arrest)* (International Criminal Court, Pre-Trial Chamber I, Case No ICC-02/05-01/07, 27 April 2007) 20, 133
- Prosecutor v Hussein (Warrant of Arrest)* (International Criminal Court, Pre-Trial Chamber I, Case No ICC-02/05-01/12, 1 March 2012). 133

Cambridge University Press

978-1-108-49930-9 — The Jurisdiction of the International Criminal Court over Nationals of Non-States Parties

Monique Cormier

Frontmatter

[More Information](#)

xviii

TABLE OF CASES

- Prosecutor v Kenyatta (Decision on the Prosecutor's Application for Summonses to Appear for Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali)* (International Criminal Court, Pre-Trial Chamber II, Case No ICC-01/09-02/11, 8 March 2011). 83
- Prosecutor v Kenyatta (Decision on the withdrawal of charges against Mr Kenyatta)* (International Criminal Court, Trial Chamber V(B), Case No ICC-01/09-02/11, 13 March 2015) 83
- Prosecutor v Lubanga (Decision on the Confirmation of Charges)* (International Criminal Court, Pre-Trial Chamber I, Case No ICC-01/04-01/06, 29 January 2007) 176
- Prosecutor v Lubanga (Judgment pursuant to Article 74 of the Statute)* (International Criminal Court, Trial Chamber I, Case No ICC-01/04-01/06, 14 March 2012) 176
- Prosecutor v Mahmoud Mustafa Busayf Al-Werfalli (Second Warrant of Arrest)* (International Criminal Court, Pre-Trial Chamber I, Case No ICC-01/11-01/17, 4 July 2018) 136
- Prosecutor v Muammar Gaddafi (Decision to Terminate the Case Against Muammar Mohammed Abu Minyar Gaddafi)* (International Criminal Court, Pre-Trial Chamber I, Case No ICC-01/11-01/11, 22 November 2011) 83
- Prosecutor v Muthauru, Kenyatta and Ali (Judgment on the appeal of the Republic of Kenya against the decision of Pre-Trial Chamber II of 30 May 2011 entitled 'Decision on the Application by the Government of Kenya Challenging the Admissibility of the Case Pursuant to Article 19(2)(b) of the Statute')* (International Criminal Court, Appeals Chamber, Case No ICC-01/09-02/11 OA, 30 August 2011) 25
- Prosecutor v Nourain (Warrant of Arrest)* (International Criminal Court, Trial Chamber IV, Case No ICC-02/05-03/09, 11 September 2014) 133
- Prosecutor v Ruto and Sang (Decision on Prosecutor's Application for Witness Summonses and resulting Request for State Party Cooperation)* (International Criminal Court, Trial Chamber V (A), Case No ICC-01/09-01/11, 17 April 2014) 53
- Prosecutor v Saif Al-Islam Gaddafi (Decision on the 'Admissibility Challenge by Dr Saif Al-Islam Gaddafi pursuant to Articles 17(1)(c), 19 and 20(3) of the Rome Statute')* (International Criminal Court, Pre-Trial Chamber I, Case No ICC-01/11-01/11, 5 April 2019) 26, 136
- Prosecutor v Saif Al-Islam Gaddafi and Abdullah Al-Senussi (Decision on the admissibility of the case against Saif Al-Islam Gaddafi)* (International Criminal Court, Pre-Trial Chamber I, Case No ICC-01/11-01/11, 31 May 2013) 25-26, 136
- Prosecutor v Saif Al-Islam Gaddafi and Abdullah Al-Senussi (Decision on the admissibility of the case against Abdullah Al-Senussi)* (International Criminal Court, Pre-Trial Chamber I, Case No ICC-01/11-01/11, 11 October 2013) 25, 136, 138
- Prosecutor v Saif Al-Islam Gaddafi and Abdullah Al-Senussi (Judgment on the appeal of Libya against the decision of Pre-Trial Chamber I of 31 May 2013)* (International Criminal Court, Appeals Chamber, Case No ICC-01/11-01/11, 21 May 2014) 26, 136

Cambridge University Press

978-1-108-49930-9 — The Jurisdiction of the International Criminal Court over Nationals of Non-States Parties

Monique Cormier

Frontmatter

[More Information](#)

TABLE OF CASES

xix

- Request under Regulation 46(3) of the Regulations of the Court (Decision on the 'Prosecution's Request for a Ruling on Jurisdiction under Article 19(3) of the Statute')* (International Criminal Court, Pre-Trial Chamber I, Case No ICC-RoC46(3)-01/18, 6 September 2018) 17, 56
- Situation in Bangladesh/Myanmar (Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the People's Republic of Bangladesh/Republic of Myanmar)* (International Criminal Court, Pre-Trial Chamber III, Case No. ICC-01/19, 14 November 2019) 37, 62, 76
- Situation in Georgia (Decision on the Prosecutor's request for authorization of an investigation)* (International Criminal Court, Pre-Trial Chamber I, Case No ICC-01/15, 27 January 2016) 27, 76
- Situation in Libya (Warrant of Arrest for Al-Tuhamy Mohamed Khaled)* (International Criminal Court, Pre-Trial Chamber I, Case No ICC-01/11-01/13, 18 April 2013) 136
- Situation in Libya (Warrant of Arrest for Mahmoud Mustafa Busayf Al-Werfalli)* (International Criminal Court, Pre-Trial Chamber I, Case No ICC-01/11-01/17, 15 August 2017) 136
- Situation in the Islamic Republic of Afghanistan (Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Islamic Republic of Afghanistan)* (International Criminal Court, Pre-Trial Chamber II, Case No ICC-02/17, 12 April 2019) 95
- Situation in the Islamic Republic of Afghanistan (Judgment on the Appeal against the Decision on the Authorisation of an Investigation into the Situation in the Islamic Republic of Afghanistan)* (International Criminal Court, Appeals Chamber, Case No ICC-02/17 OA4, 5 March 2020)
- Situation in the Islamic Republic of Afghanistan (Request for Authorisation of an Investigation Pursuant to Article 15)* (International Criminal Court, Office of the Prosecutor, Case No ICC-02/17-7-RED, 20 November 2017) 94
- Situation in the Libyan Arab Jamahiriya (Warrant of Arrest for Abdullah Al Senussi)* (International Criminal Court, Pre-Trial Chamber I, Case No ICC-01/11, 27 June 2011) 25, 136
- Situation in the Libyan Arab Jamahiriya (Warrant of Arrest for Muammar Gaddafi)* (International Criminal Court, Pre-Trial Chamber I, Case No ICC-01/11, 27 June 2011) 25, 83, 136
- Situation in the Libyan Arab Jamahiriya (Warrant of Arrest for Saif Al-Islam Gaddafi)* (International Criminal Court, Pre-Trial Chamber I, Case No ICC-01/11, 27 June 2011) 25, 136
- Situation in the Republic of Burundi (Public Redacted Version of 'Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Burundi')* (International Criminal Court, Pre-Trial Chamber III, Case No ICC-01/17-X, 9 November 2017) 55
- Situation in the Republic of Côte d'Ivoire (Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Republic of*

Cambridge University Press

978-1-108-49930-9 — The Jurisdiction of the International Criminal Court over Nationals of Non-States Parties

Monique Cormier

Frontmatter

[More Information](#)

XX

TABLE OF CASES

Côte d'Ivoire (International Criminal Court, Pre-Trial Chamber III, Case No ICC-02/11, 3 October 2011) 82

Situation in the Republic of Côte d'Ivoire (Warrant of Arrest for Laurent Koudou Gbagbo) (International Criminal Court, Pre-Trial Chamber III, Case No ICC-02/11, 23 November 2011) 83

International Military Tribunals

International Military Tribunal (Nuremberg), Judgment and Sentences, reproduced in 'Judicial Decisions' (1947) 41 *American Journal of International Law* 172 45–46, 178–179, 184

Röling, BVA and CF Rüter (eds), *The Tokyo Judgment: The International Military Tribunal for the Far East (IMTFE) 29 April 1946–2 November 1948* (APA – University Press, 1977) 178–179

Special Court for Sierra Leone

Prosecutor v Fofana (Decision on Preliminary Motion on Lack of Jurisdiction Materiae: Illegal Delegation of Powers by the United Nations) Special Court for Sierra Leone, Appeals Chamber, Case No SCSL-2004-14-AR72(E), 25 May 2004) 148

Prosecutor v Gbao (Decision on the Preliminary Motion on the Invalidity of the Agreement Between the United Nations and the Government of Sierra Leone on the Establishment of the Special Court) (Special Court for Sierra Leone, Appeals Chamber, Case No SCSL-2004-15-AR72(E), 25 May 2004) 48, 188

Prosecutor v Kallon and Kamara (Decision on Challenge to Jurisdiction: Lomé Accord Amnesty) (Special Court for Sierra Leone, Appeals Chamber, Case No SCSL-2004-15-AR72(E), 13 March 2004) 188

Prosecutor v Norman (Decision on Preliminary Motion Based on Lack of Jurisdiction (Child Recruitment)) (Special Court for Sierra Leone, Appeals Chamber, Case No SCSL 2004-14-AR72(E), 31 May 2004) 176

Prosecutor v Taylor (Decision on Immunity from Jurisdiction) (Special Court for Sierra Leone, Appeals Chamber, Case No SCSL-2003-01-I, 31 May 2004) 85

Special Tribunal for Lebanon

Prosecutor v Ayyash (Decision on the Defence Appeals Against the Trial Chamber's 'Decision on the Defence Challenges to the Jurisdiction and Legality of the Tribunal') (Special Tribunal for Lebanon, Appeals Chamber, Case No STL-11-01/PT/AC/AR90.1, 24 October 2012) 148

Cambridge University Press

978-1-108-49930-9 — The Jurisdiction of the International Criminal Court over Nationals of Non-States Parties

Monique Cormier

Frontmatter

[More Information](#)

TABLE OF CASES

xxi

European Court of Justice

van Gend & Loos v Nederlandse Administratie der Belastingen (C-26/62) [1963] ECR
1 52

Domestic Courts

Australia

Moti v The Queen (2011) 245 CLR 456 92

Giles v Tumminello [1963] SASR 96 66

Belgium

*Prosecutor v Vincent Ntezimana, Alphonse Higaniro, Consolata Mukangango, and
Julienne Mukabutera*, [Brussels, Unreported] Cour d'Assises de l'Arrondissement
Administratif Bruxelles, 8 June 2001 177

Israel

Attorney-General of the Government of Israel v Adolf Eichmann (1962) 36 ILR 5 66, 92,
164–165, 171, 185

Netherlands

Knezević, [Dutch Supreme Court] *Nederlandse Jurisprudentie* (1998) No 463,
11 November 1997 177

Switzerland

Grabež, [Swiss Military Tribunal] *Tribunal Militaire de Division I*, 18 April 1997 177

Ukraine

*Opinion of the Constitutional Court on the Conformity of the Rome Statute with the
Constitution of Ukraine*, Case N 1–35/2001, 11 July 2001, summarised in ICRC, 'Issues
Raised with Regard to the Rome Statute of the International Criminal Court by
National Constitutional Courts, Supreme Courts and Councils of State' (January,
2003)

icrc.org/eng/assets/files/other/issues_raised_with_regard_to_the_icc_statute.pdf 74

United Kingdom

Al Megrahi v Her Majesty's Advocate (Scotland) [1999] HCJT 1475 166

Naim Molvan, Owner of Motor Vessel 'Asya' v A-G (Palestine) [1948] AC 351 66

R v Bow Street Stipendiary Magistrate; Ex parte Pinochet Ugarte [1998] All ER 897 78

R v Bow Street Stipendiary Magistrate; Ex parte Pinochet Ugarte [No 2] [1999] 1 All ER
577 78, 180

R v Bow Street Stipendiary Magistrate; Ex parte Pinochet Ugarte [No 3] [2000] 1 AC
147 78

US v Ali 718 F 3d 929 (DC Cir, 2013) 43–44
US v Newball 524 F Supp 715 (EDNY 1981) 66
US v Rezaq 134 F 3d 1121 (DC Cir, 1998) 43
US v Shi 525 F 3d 709 (9th Cir, 2008) 43
US v Yousef 327 F 2d 56 (2nd Cir, 2003) 43
US v Yunis 924 F 2d 1086 (DC Cir, 1991) 43

Cambridge University Press

978-1-108-49930-9 — The Jurisdiction of the International Criminal Court over Nationals of Non-States Parties

Monique Cormier

Frontmatter

[More Information](#)

TABLE OF TREATIES AND SELECTED OTHER INSTRUMENTS

International Agreements

- Agreement between the Government of the Transitional Islamic State of Afghanistan and the Government of the United States of America regarding the surrender of persons to the International Criminal Court* (20 September 2002) law.georgetown.edu/library/research/guides/upload/Afghanistan03-119.pdf 96
- Agreement between Liberia and the United Nations Concerning the Status of the United Nations Mission in Liberia* (6 November 2003) unmil.unmissions.org/sites/default/files/unmil_status_of_forces_agreement_6_november_2003.pdf 129
- Agreement between the North Atlantic Treaty Organization and the Islamic Republic of Afghanistan on the Status of NATO Forces and NATO Personnel Conducting Mutually Agreed NATO-Led Activities in Afghanistan* (30 September 2014) mfa.gov.af/Content/files/SOFA%20ENGLISH.pdf 96
- Agreement between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces* (19 June 1951) 199 UNTS 67 103
- Agreement between the United Nations and the Government of Sierra Leone on the establishment of a Special Court for Sierra Leone*, signed 16 January 2002, 2178 UNTS 137 (entered into force 12 April 2002) 48
- Agreement between the United States of America and Romania Regarding the Status of United States Forces in Romania* (signed 20 October 2001, entered into force 10 June 2002) TIAS 13170 103
- Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis and Charter of the International Military Tribunal*, 82 UNTS 279 (entered into force 8 August 1945) 45, 172, 178
- Amendments on the crime of aggression to the Rome Statute of the International Criminal Court*, Resolution RC/Res.6, adopted at the 13th plenary mtg (11 June 2010) 116, 152–158, 178, 193
- Charter of the United Nations*, opened for signature 26 June 1945, 1 UNTS XVI (entered into force 24 October 1945)
- Coalition Provisional Authority Order No 17, Status of the Coalition, Foreign Liaison Missions, their Personnel and Contractors CPA/ORD/27 June 2004/17 (27 June 2004) 101

XXIV TABLE OF TREATIES AND SELECTED OTHER INSTRUMENTS

- Convention against the Taking of Hostages*, opened for signature 17 December 1979, 1316 UNTS 205 (entered into force 3 June 1983) 42–43, 66, 163
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987) 42, 163
- Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, opened for signature 12 August 1949, 75 UNTS 31 (entered into force 21 October 1950) ('Geneva Convention I') 175
- Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea*, opened for signature 12 August 1949, 75 UNTS 85 (entered into force 21 October 1950) ('Geneva Convention II') 175
- Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation*, opened for signature 10 March 1988, 1678 UNTS 221 (entered into force 26 June 1992) 42, 65
- Convention for Suppression of Unlawful Seizure of Aircraft*, opened for signature 16 December 1970, 860 UNTS 105 (entered into force 14 October 1971) 42, 163
- Convention on the Prevention and Punishment of the Crime of Genocide*, opened for signature 9 December 1948, 78 UNTS 277 (entered into force 12 January 1951) 170–171
- Convention on Offences and Certain Other Acts Committed on Board Aircraft*, opened for signature 14 September 1963, 704 UNTS 219 (entered into force 4 December 1969) 42, 65, 163
- Convention on the Suppression and Punishment of the Crime of Apartheid*, opened for signature 30 November 1973, 1015 UNTS 243 (entered into force 18 July 1976) 173
- Convention Relative to Protection of Civilian Persons in Time of War*, opened for signature 12 August 1949, 75 UNTS 287 (entered into force 21 October 1950) ('Geneva Convention IV') 175–176
- Convention Relative to the Treatment of Prisoners of War*, opened for signature 12 August 1949, 75 UNTS 135 (entered into force 21 October 1950) ('Geneva Convention III') 175
- Convention respecting the Laws and Customs of War on Land*, opened for signature 18 October 1907 (1908) 2 *American Journal of International Law Supplement* 90 (entered into force 26 January 1910) ('1907 Hague Convention IV') 174
- Convention with respect to the Laws and Customs of War on Land*, opened for signature 29 July 1899, (1907) 1 *American Journal of International Law Supplement* 129 (entered into force 4 September 1900) ('1899 Hague Convention II') 174
- Declaration of Principles on Interim Self-Government Arrangements*, Palestine Liberation Organisation – Israel (13 September 1993) ('Oslo I') [unsc.org/ Documents/Key/Declaration%20of%20Principles%20on%20Interim%20Self-Government%20Arrangements.pdf](https://www.un.org/Depts/los/convention_agreements/texts/declaration/1993_09_13_oslo_i.pdf) 110–111
- Declaration regarding the defeat of Germany and the assumption of supreme authority with respect to Germany by the Governments of the United States of America, the Union of Soviet Socialist Republics, the United Kingdom and the Provisional*

Cambridge University Press

978-1-108-49930-9 — The Jurisdiction of the International Criminal Court over Nationals of Non-States Parties

Monique Cormier

Frontmatter

[More Information](#)

TABLE OF TREATIES AND SELECTED OTHER INSTRUMENTS XXV

Government of the French Republic ('Berlin Declaration'), signed 5 June 1945 avalon.law.yale.edu/wwii/ger01.asp 46

European Convention on the Transfer of Proceedings in Criminal Matters, opened for signature 15 May 1972, 865 UNTS 99 (entered into force 30 March 1978) 41–42

Instrument of Surrender, Germany, signed 4 May 1945 avalon.law.yale.edu/wwii/gsl0.asp 46

Instrument of Surrender, Japan, signed 2 September 1945 archives.gov/exhibits/featured_documents/japanese_surrender_document 47

International Convention for the Suppression of the Financing of Terrorism, opened for signature 9 December 1999, 2178 UNTS 197 (entered into force 10 April 2002) 42

Israeli–Palestinian Interim Agreement on the West Bank and the Gaza Strip, Palestinian Liberation Organisation – Israel (28 September 1995) ('Oslo II') 8, 110–112

Negotiated Relationship Agreement between the International Criminal Court and the United Nations, UN Doc A/58/874, Annex, 20 August 2004 (entered into force 4 October 2004) 114, 125, 148

Proclamation Defining the Terms for the Japanese Surrender, US–China–UK, signed July 1945, 3 *Treaties and Other International Agreements of the United States of America 1776–1949* 1204 ('Potsdam Proclamation') 47

Protocol additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts, opened for signature 8 June 1977, 1125 UNTS 3 (entered into force 7 December 1978) ('Additional Protocol I') 175–176

Protocol additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non-International Armed Conflicts, opened for signature 8 June 1977, 1125 UNTS 609 (entered into force 7 December 1978) ('Additional Protocol II') 175, 177

Rome Statute of the International Criminal Court, opened for signature 17 July 1998, 2187 UNTS 90 (entered into force 1 July 2002)

Security and Defense Cooperation Agreement between the Islamic Republic of Afghanistan and the United States of America (30 September 2014) justsecurity.org/wp-content/uploads/2014/10/BSA-ENGLISH-AFG.pdf 96

United Nations Convention on the Law of the Sea 1982, opened for signature 10 December 1982, 1833 UNTS 3 (entered into force 16 November 1994) 62

Vienna Convention on Consular Relations 1963, opened for signature 24 April 1963, 596 UNTS 261 (entered into force 19 March 1967) 21

Vienna Convention on Diplomatic Relations, opened for signature 18 April 1961, 500 UNTS 95 (entered into force 24 April 1964) 78, 80, 96

Vienna Convention on the Law of Treaties, opened for signature 23 May 1969, 1155 UNTS 331 (entered into force 27 January 1980) 14–15, 52, 75, 111

United Nations Security Council Resolutions

SC Res 2479, UN SCOR, 8566th mtg, UN Doc S/RES/2479 (27 June 2019) 133

Cambridge University Press

978-1-108-49930-9 — The Jurisdiction of the International Criminal Court over Nationals of Non-States Parties

Monique Cormier

Frontmatter

[More Information](#)

xxvi TABLE OF TREATIES AND SELECTED OTHER INSTRUMENTS

SC Res 1970, UN SCOR, 6491st mtg, UN Doc SC/RES/1970 (26 February 2011) 26, 83, 135–138

SC Res 1593, UN SCOR, 5158th mtg, UN Doc SC/Res/1593 (31 March 2005) 82, 132–140, 144

SC Res 1509, UN SCOR, 4830th mtg, UN Doc S/RES/1509 (19 September 2003) 128

SC Res 1497, UN SCOR, 4803rd mtg, UN Doc S/RES/1497 (1 August 2003) 125–130

SC Res 1487, UN SCOR, 4772nd mtg, UN Doc S/RES/1487 (12 June 2003) 120–121

SC Res 1422, UN SCOR, 4572nd mtg, UN Doc S/RES/1422 (12 July 2002) 120–126, 130

SC Res 955, UN SCOR, 3453rd mtg, UN Doc S/RES/955 (8 November 1994) 48, 143

SC Res 827, UN SCOR, 3217th mtg, UN Doc S/RES/827 (25 May 1993) 48, 143

SC Res 777, UN SCOR, 3116th mtg, UN Doc S/RES/777 (19 September 1992) 150

SC Res 713, UN SCOR, 3009th mtg, UN Doc SC/Res/713 (25 September 1991) 146

SC Res 409, UN SCOR, 2011th mtg, UN Doc SC/Res/409 (27 May 1977) 146

ABBREVIATIONS

DRC	Democratic Republic of the Congo
FRY	Federal Republic of Yugoslavia
ICC	International Criminal Court
ICJ	International Court of Justice
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for Yugoslavia
ILC	International Law Commission
ISAF	International Security Assistance Force
NATO	North Atlantic Treaty Organization
NGO	non-governmental organisation
PCIJ	Permanent Court of International Justice
PLO	Palestinian Liberation Organization
SCSL	Special Court for Sierra Leone
SFRY	Socialist Federal Republic of Yugoslavia
SOFA	Status of Forces Agreement
SOMA	Status of Mission Agreement
UK	United Kingdom
UN	United Nations
UNMIL	United Nations Mission in Liberia
US	United States
VCLT	Vienna Convention on the Law of Treaties