

**ANNOTATED LEADING CASES OF
INTERNATIONAL CRIMINAL TRIBUNALS**

VOLUME LX

**EXTRAORDINARY CHAMBERS IN THE COURTS
OF CAMBODIA**

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Extraordinary Chambers in the Courts of Cambodia 2011–2013

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PREFACE

This is the sixtieth volume in the series ‘Annotated Leading Cases of International Criminal Tribunals’ (ALC) and contains the most important decisions of the Extraordinary Chambers in the Courts of Cambodia (ECCC) handed down in the period 1 April 2011 – 31 May 2013. It is the third volume in the series containing decisions of the ECCC. A number of further volumes on ECCC case law will be published in the series in the coming years.

This volume is in its approach and structure similar to previous volumes. Thus, the book contains the full text of all the annotated decisions and judgements, including any separate, concurring and dissenting opinions, as well as annexes to the decisions. As with previous volumes, the Editors have ensured that the decisions are identical to the *written* original text, as issued by the ECCC Press and Information Office, and which bears the signatures of the Judges, as only these can be considered as authoritative versions. In the course of our editorial work on this and previous volumes, we have occasionally discovered inconsistencies between the written original version of the decision and any available internet versions.

Although we are only able to include the full text of the decisions by reducing their original format, we wanted the reader to be able to identify the page number of the original text, which is placed in brackets [].

We are very pleased that a number of distinguished international law scholars were prepared to write interesting and stimulating commentaries regarding these decisions, and believe that their contributions will add to the breadth of knowledge and understanding about the work of the ECCC.

A few words regarding the selection of decisions in the ALC volumes are appropriate given the fact that we have decided to change the policy concerning the publication of judgements. In previous volumes for other courts and tribunals, we selected all final judgements, rendered by both the Trial Chamber as well as by the Appeals Chamber in the same case. In view of the fact that more and more judgements deal with established case law, and in light of the space all the judgements cover in the series, we have decided no longer to select judgements at the Trial Chamber stage in cases in which there is already an existing Appeals Chamber judgement. The commentator to the latter judgement is invited to include a comparison of the Trial and Appeals Chamber judgements in his or her contribution. In doing so, we expect to be able to focus more on the key issues that are at stake in the case at hand. In addition, we expect to be able to publish the volumes sooner following the handing down of the relevant Appeals Chamber judgement.

With regard to other decisions, the existing policy will be maintained. This means that, additionally, we will continue to publish decisions taken at any stage of the proceedings that are important for other reasons: because they deal with a specific legal question, because they are representative of a specific type of decision, or because they enter new legal waters. As a result, we may not publish decisions in which issues have been decided in a way similar or identical to a decision that has already been selected.

The decisions annotated in this volume cover a range of issues arising from proceedings before the ECCC. A number of these address procedural and evidence-related issues, including case management and severance, summary actions, fairness of the judicial investigation, and admissibility of evidence.

Other decisions address substantive issues including those regarding Joint Criminal Enterprise, the armed conflict nexus, and definitions of the relevant crimes.

In addition, this volume includes two substantial judgements, one relating to Ieng Sary’s appeal against a closing order and the other being the Appeals Judgement in the *Duch* case.

Once again, we gratefully acknowledge the assistance of many people without whom we could not have completed this volume. These include the Press and Information Office of the ECCC, which offered generous assistance in obtaining all the necessary copies of decisions, our publisher Intersentia, in particular Hans Kluwer, Tom Scheirs and Isabelle van Dongen, and also our excellent Assistant Editor, Victoria Haerberle.

Of course, we would again like to thank the distinguished authors for their commentaries on the decisions, and their cooperation throughout the process.

We hope that this volume will contribute to the further dissemination of the important work of the ECCC, and that it will provide access to its decisions to practitioners, academics and students.

We continue to make every effort to maintain the high standard of previous volumes, and the Editors welcome feedback and suggestions as to how the ALC series can be continuously improved, so as to maximise its value to readers. The ALC is the largest case law series on international criminal jurisprudence in the world, and it is our on-going aim to make it as useful as possible to all persons interested in the work of the various institutions.

We therefore hope that you will find this volume to be a significant addition to your research resources in this ever more important area of international law.

André Klip and Steven Freeland

Maastricht/ Sydney, May 2020