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INTERNATIONAL CRIMINAL TRIBUNALS**

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Annotated Leading Cases of International Criminal Tribunals

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PREFACE

This is the eleventh volume in the series “Annotated Leading Cases of International Criminal Tribunals” and contains the most important decisions of the International Criminal Tribunal for the former Yugoslavia (ICTY) from 3 August 2002 until 1 April 2003. It is the seventh volume in the series containing decisions of the ICTY, which indicates the abundant production of that institution.

Fully engaged in its Completion Strategy, the ICTY is highly productive in the period covered by this volume. From 3 August 2002 until 1 April 2003, the ICTY issued a variety of decisions, including four judgements.

The present volume is in its approach and structure similar to the previous ten volumes. Thus, the book contains the full text of all the decisions and judgements, including separate, concurring and dissenting opinions, as well as annexes to the decisions. As in the previous volumes, the editors have ensured that the decisions are fully identical to the written original text as issued by the ICTY Press and Information Office and which bears the signatures of the Judges. We are aware that more and more decisions are available on the internet. However, only the written decisions bearing the signatures of the Judges can be considered authoritative versions. In the course of our editorial work on this and previous volumes, we have discovered inconsistencies between the written original version of the decision and the internet version, if the latter is available at all. Much of our editorial efforts consist in making the texts in this series identical to the written original version.

We could only include the full text of the decisions in this volume by reducing their original format. Still, we wanted the reader to be able to identify the page number of the original text, which is throughout the text put in brackets []. We are again very happy that a number of scholars in the field of international criminal law were prepared to write interesting and stimulating commentaries to the decisions.

A few words regarding the selection of decisions may give the user insight into our working method. In principle, we select all final judgements. In addition, we publish decisions taken in any stage of the procedure 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. Of course, we cannot publish all decisions. 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 are presented in different parts and under different headings.

Part 1 deals with preliminary matters. As in previous volumes, this part contains a number of decisions on jurisdiction of the Tribunal, decisions relating to provisional release and decision concerning (the form of) the indictment. All those matters can be considered “usual” pre-trial matters, although some, like provisional release, may continue to arise after commencement of the trial.

Although to a certain degree those pre-trial matters have become routine, the decisions included clearly mark the present stage of the ICTY’s development and also continue to address new legal issues, as is the case, for example, with the jurisdiction decisions in relation to substantive international criminal law, as set out under heading 1. A more regular challenge to jurisdiction, based on alleged illegality of arrest, is the object of heading 2.

Heading 3 contains decisions on provisional release, illustrating the development of the law of the ICTY on this point. Recurring themes regarding the indictment – form and amendment – are covered by heading 4.

Part 2 is entitled procedural matters and deals with a variety of issues. A number of those headings demonstrate the endeavours by the Tribunal, particularly the Prosecutor, to expedite proceedings as much as possible. Thus, under the heading “joinder and separation of trials” (5), the Trial Chamber and Appeals Chamber respond to the wishes of the Prosecutor to join cases/trials. Under the next heading (6), the reader finds a decision aimed at obtaining cooperation between the parties to the proceedings, which can be vital in expediting an essentially adversarial trial.

Headings 7 and 8 deal with the recurring issues of disclosure and witnesses, be it that the latter is confined to the particular issue of an alleged evidentiary privilege for journalists.

Admissibility of evidence, with a prominent role for Rule 92bis, is the topic of heading 9. Heading 10 brings together a number of decisions related to the right to an independent and impartial tribunal. Heading 11 is entitled contempt, counsel and right to an effective defence, dealing with related issues. Heading 12 deals with the right to and scope of appeal, containing one decision. Heading 13 focuses on the guilty plea. As an exception, it includes material not being a decision, namely the plea agreement between Ms. Plavšić and the ICTY Prosecutor, because of its importance for the growing practice of plea-bargaining at the ICTY. Finally, under part 2, heading 14 contains decisions related to State cooperation, with special attention on deferral requests.

Part 3, containing a number of judgements, covers by far the largest part of this volume. As mentioned above, judgements are by definition included in this series, because of their importance, both from a factual and legal perspective. However, this only concerns final judgements, not the judgements contained under heading 15, judgements on motions for acquittal. Their importance for international criminal law is not by definition significant, as is now evidenced by the practice of rendering such decisions orally.

Under heading 16 the reader finds two fully-fledged Trial Chamber judgements in the cases of Vasiljević and Martinović/Naletilić. Sentencing judgements, following a plea of guilt, are set out under heading 17 and concern the accused Plavšić and Simić.

Part 4 is relatively new in this series, but will probably remain of vital importance, and deals with post-conviction or acquittal issues. Under heading 18 the reader finds three typical examples of such issues: review, early release and compensation (in the case of acquittal).

We owe acknowledgements to many persons without whom we could not have completed this eleventh volume. These include our publisher Intersentia, in particular Hans Kluwer and Isabelle van Dongen, our student assistants Thom Dieben (Maastricht) and Denis Abels (Amsterdam), who assisted with the corrections of the text and the Netherlands School of Human Rights Research, which greatly facilitated our work. Christian Chartier and his staff from the ICTY Press and Information Office have helped us in obtaining all the hard copies of decisions. Steven Freeland from the University of Western Sydney, Australia, offered tremendous help by correcting our English. Last but not least, we wish to thank the distinguished authors for their commentaries to the decisions.

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

André Klip and Göran Sluiter
Maastricht/Amsterdam, August 2007