

**ANNOTATED LEADING CASES OF
INTERNATIONAL CRIMINAL TRIBUNALS**

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2005–2007**

André KLIP and Göran SLUITER (eds.)



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Annotated Leading Cases of International Criminal Tribunals

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PREFACE

This is the twenty-third volume in the series ‘Annotated Leading Cases of International Criminal Tribunals’ and contains the most important decisions of the International Criminal Court (ICC), from the entry into force of the Rome Statute on 1 July 2002 up to and including 29 April 2007. It is the first volume in the series containing decisions of the ICC.

The ICC is intended to be the permanent solution to the various forms of *ad hoc* international tribunals that have been established over the last two decades. As a result, it is also expected that ICC case law will take up more and more volumes in this series and may gradually become the only category of ‘leading cases of international criminal tribunals’ covered.

This preface is not the proper place to reflect on the ICC’s first years, its achievements and shortcomings. We would instead refer the reader to existing and far more comprehensive literature on that point.¹

However, for the purposes of this series, it is imperative to point out a number of aspects in which the ICC departs significantly from other international criminal Tribunals and which may affect the selection of cases and the structure of volumes dealing with the ICC.

First, the ICC has produced a rich initial body of jurisprudence – perhaps a bit too rich – in which many aspects of the Statute and the Rules of Procedure and Evidence have to be interpreted for the first time. Clearly, such case law sets the tone and is likely to determine the future direction of the Court and further developments in the law. As a result, we have tried to be very inclusive and comprehensive, although at such an early stage, one can never know if a certain decision will survive the subsequent scrutiny of other (and higher) Chambers.

Secondly, the law of the ICC contains a number of innovative elements, unknown to other Tribunals, such as complementarity, victim participation and the confirmation of charges by the Pre-Trial Chamber. It is self-evident that such elements deserve a prominent place in the selection of cases. However, we have not considered it necessary to alter our basic structure. Also, in relation to the ICC, one can distinguish between preliminary matters, procedural matters, substantive decisions/ judgements, and post-conviction/ acquittal issues, be it that one may need to slightly revise the scope and content of these categories.

‘Preliminary matters’ in relation to the ICC covers matters prior to the appearance of the arrested person, or motions that, in case of successful response, would prevent, in full or in part, a continuation of the trial. Obvious examples are motions challenging the Court’s jurisdiction, or the admissibility of the case. ‘Procedural matters’ cover much of the same issues as in previous volumes, namely evidentiary matters, counsel-related matters, impartiality etc. As was already mentioned, new phenomena like victim participation are added to this already large category.

Finally, a few words need to be said about the part entitled ‘Judgements’. Under this part in ICC volumes we have also categorised decisions on the confirmation of charges, in spite of the affirmation that the confirmation hearing cannot be regarded as a ‘mini-trial’ (and as a result, the decision is not a ‘mini-judgment’). However, the confirmation decisions issued in the Lubanga and Katanga/ Chui cases deal with such a wide variety of factual and legal issues, and are of such length, that they bear similarities to final judgements.

Thirdly, it must be noted that the ICC has adopted its own system of citation. For the sake of uniformity, we have followed the method of citation used in previous volumes, namely first the title of the decision, then the parties, then case number, then the Chamber/ judge that has issued the decision and finally the date. However, for the purposes of short and swift reference, the ICC uses a system in which the case number is mentioned followed by the number of filing in that particular case. For example, ICC-01/04-01/06-2205 refers to the 2205th filing in the Lubanga case. The reader will find this reference in the upper right corner of the first page of each decision selected.

¹ See, for example, C. Stahn and G. Sluiter, *The Emerging Practice of the International Criminal Court*, Koninklijke Brill NV, Leiden 2009.

The present volume is in its approach and structure similar to previous volumes. Thus, the book contains the full text of all the decisions, including separate, concurring and dissenting opinions, as well as annexes to the decisions. As with the previous volumes, the editors have ensured that the decisions are fully identical to the *written* original text, as issued by the ICC Press and Information Office and which bears the signatures of the judges.

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 regarding the decisions.

A few words regarding the selection of decisions may give the user an insight into our working method. In principle, we select all final judgements. In addition, we publish decisions taken at 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, 'Preliminary Matters', includes decisions on the initiation of investigations/ unique investigative opportunity/ preservation of evidence (1) and the issuance of arrest warrants and the admissibility of a case (2).

Part 2 deals with procedural matters and contains decisions under the following headings: habeas corpus rights (3), participation of victims (4), witnesses – decisions related to protection (5), witness proofing (6), disclosure (7), disclosure – interpretation of Rule 81 (8), admissibility of evidence (9), preparation of defence/ language issues (10), impartiality/conflict of interest (11), counsel (12), State cooperation (13), legal position of detainees (14), appeal, review and other remedies (15).

Part 3, 'Judgements', contains the decision on the confirmation of charges in the Lubanga case (16), and has been included under this heading for reasons set out above.

We owe acknowledgements to many persons without whom we could not have completed this twenty-third volume. These include our publisher Intersentia, in particular Hans Kluwer, Tom Scheirs and Isabelle van Dongen. We also acknowledge the work of our (former) student assistants, Thom Dieben, Mariam Pathan (Maastricht) and Robbert-Jan Winters (Amsterdam), who assisted with the corrections of the text and without whom we would not be able to publish this series. The Netherlands School of Human Rights Research stimulated our work. Professor 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 on the decisions.

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

André Klip and Göran Sluiter

Maastricht/ Amsterdam, December 2009