

The *Raison d’Être* of a Book: An Introduction to “International Criminal Law, Humanitarian Law and Refugee Law from the Perspective of Human Rights Law”

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ABSTRACT

This chapter is meant to be an introduction to the volume of “International Criminal Law, Humanitarian Law and Refugee Law from the Perspective of Human Rights Law”, a piece of the textbook series designed for students of the Human Rights and Rule of Law LL.M. programme co-organised by the Central European Academy (Budapest, Hungary) and the Faculty of Law, University of Miskolc (Miskolc, Hungary). The paper briefly explains the interaction between international criminal law, humanitarian law, refugee law and human rights law, then determines the scope and aim of the book, dedicates the book to its target audience, explains why the book is unique among general international public law textbooks, and overviews a detailed structure of the book, including chapters on the history of international criminal law, on international crimes, on the International Criminal Tribunal for the Former Yugoslavia and on the International Criminal Tribunal for Rwanda, on the International Criminal Court, on the history of humanitarian law, on the principles of humanitarian law, on the 1949 Geneva Conventions and their Additional Protocols I-III, on the distinction and scope of migration law and refugee law in general terms, on the 1951 Convention Relating to the Status of Refugees, on the principle of non-refoulement, and on the special Central and Eastern European features of these fields. Finally, this chapter adds an acknowledgement as a closure of the editor’s introductory thoughts.

KEYWORDS

international criminal law, international human rights law, international humanitarian law, international public law, international refugee law

1. International Criminal Law, Humanitarian Law, Refugee Law and Human Rights Law: How Are They Connected?

International criminal law, humanitarian law and refugee law are separate branches of international public law, however, they have developed with regard to one another and they interact in several ways, especially in respect of armed conflicts. Likewise, international criminal law, humanitarian law and refugee law are complementary bodies of law that cannot achieve their ultimate aims without taking into due

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consideration human rights: the latter works as a net that permeates the entire functioning of other branches. As Gillard notes, international humanitarian law, refugee law and human rights law share a common goal, i.e. the protection of the lives, health and dignity of persons.¹ Concurrently, international criminal law, from the angle of restorative justice, acknowledges the harm caused by the breach of human rights norms concerning the lives, health and dignity of persons and provides justice and reparations for victims.

According to the United Nations Office of the High Commissioner for Human Rights, ‘human rights are rights we have simply because we exist as human beings – they are not granted by any State’.² This definition reflects a strong natural law approach which is additionally underscored by the principles applicable to them: universality, inalienability, indivisibility, interdependence and the prohibition of discrimination. Human rights are inherent to us all, regardless of our nationality, sex, national or ethnic origin, colour, religion, language, or any other status. In this vein, international criminal law, humanitarian law and refugee law are supplementary bodies of law affirming the enforcement of human rights including the abovementioned principles.

International criminal law and human rights law³ are both related to the recognition of the legal subjectivity of individuals under international law in the 20th century. In light of the famous theory of Georges Scelle,⁴ legal subjectivity of individuals manifests in two ways in international public law. On the one hand, individuals may appear as direct subjects of human rights, and they may enjoy the benefits and protection emerging from this status (“active side”). On the other hand, individuals may also appear as direct subjects of international criminal law, i.e. they are responsible for committing international crimes: the crime of genocide, crimes against humanity, war crimes and the crime of aggression (“passive side”).⁵ As said, grave breaches of human rights norms may result in the commitment of international crimes, and international criminal law may contribute to the proper enforcement of human rights. For instance, victims’ participation in proceedings before the International Criminal Court and reparations paid to victims demonstrate a sheer example for the close interplay between international criminal law and human rights in contemporary judicial practice.⁶ The influence of human rights on international criminal justice has also been proven by the quite recent judgement of the case of Dominic Ongwen⁷ before the International Criminal Court where the court made

1 Gillard, 2005.

2 Office of the United Nations High Commissioner for Human Rights (OHCHR), 2025.

3 Clapham, 2016, pp. 11–33.

4 Cassese, 1990, pp. 210–231.

5 Kovács, 2016, pp. 365–366.

6 Pellet, 2025, pp. 297–316; Kovács, 2020, pp. 181–194.

7 *The Prosecutor v. Dominic Ongwen*, Trial Judgement, 04 February 2021; *The Prosecutor v. Dominic Ongwen*, Judgement on the appeal of Mr Ongwen against the decision of the Trial Chamber IX of 4 February 2021 entitled “Trial Judgement”, 15 December 2022.

multiple references to the case law of international human rights bodies as well as to major human rights instruments, e.g. to the European Court of Human Rights, to the Inter-American Court of Human Rights, to the Universal Declaration of Human Rights or to the International Covenant on Civil and Political Rights.

Although international humanitarian law and human rights law are complementary areas of international public law and serve common goals, according to the International Committee of the Red Cross, there are significant differences between them which are, most importantly, their origins, their scope of application, and the bodies that implement them. First of all, human rights law is more recent than international humanitarian law: whilst the latter has ancient origins and was codified mostly in the 19th century thanks to the devoted work of Henry Dunant, the founding father of the International Committee of the Red Cross, major human rights codifications took place in the 20th century after the end of World War II starting with the adoption of the Universal Declaration of Human Rights in 1948 by the United Nations General Assembly. Almost another twenty years had passed when the first universal covenants on human rights (the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights) were adopted in 1966 creating binding legal obligations for their States Parties. As for their temporal scope of application, international humanitarian law is *lex specialis* compared to human rights law (*lex generalis*), since the former only applies in armed conflicts, whereas the latter applies at all times irrespective of armed conflicts. Although human rights instruments may permit derogations from their norms in time of public emergency including armed conflicts, some human rights, e.g. the right to life, the prohibition of torture, the prohibition of slavery or *nullum crimen sine lege*, shall never be put aside. Additionally, international humanitarian law has well-established extraterritorial applicability, while the geographical application of human rights norms has more controversies in academic debates. Their relationship as *lex specialis* and *lex generalis* can also be detected when it comes to their personal scope of application. International humanitarian law protects those who do not or no longer take part in hostilities, like civilians and *hors de combat* (the wounded, the sick, the shipwrecked and the prisoners of war), however, human rights law applies to all persons within the jurisdiction of a state. Additionally, international humanitarian law has basically a “horizontal applicability” meaning that it binds all parties of an armed conflict including states and non-state actors, while human rights law applies “vertically” at the first place to the relationship between a state and persons under that state’s jurisdiction. Finally, international humanitarian law and human rights law have some common substantive rules, e.g. the prohibition of torture or inhuman or degrading treatment or punishment. International humanitarian law rules some special areas that falls outside the substantive scope of human rights law, for example the provisions on combatants, prisoners of war, protected emblems or specific weapons.⁸

8 International Committee of the Red Cross, 2015.

Compared to human rights law, international refugee law is also a supplementary body of law: a tool used by those fleeing from persecution in their home state, needing protection abroad, and as a consequence, those who cross international borders. Unlike the natural law approach describing human rights law, refugee status is dependent on positive legal criteria established under the 1951 Convention Relating to the Status of Refugees. As a consequence, international refugee law does not apply to everyone, only to asylum seekers and refugees, nevertheless, human rights law applies to asylum seekers and refugees as well. Another link between these branches of law is that grave breaches of human rights norms may trigger the application of refugee law. In addition to persecution, which drives refugees to flee, there must always be a well-founded fear of serious violations of human rights norms.⁹

2. About This Book

This edited volume primarily serves as a textbook for the Human Rights and Rule of Law LL.M. programme that has been co-organised by the Central European Academy (Budapest, Hungary) and the Faculty of Law, University of Miskolc (Miskolc, Hungary), since the autumn semester of 2024. As its title – International Criminal Law, Humanitarian Law and Refugee Law from the Perspective of Human Rights Law – seeks to clearly demonstrate, the book focuses on those branches of international public law that are closely related to human rights law, and assists readers in getting a comprehensive overview on supplementary but significant segments of international public law that might also come into play when it comes to discussing and solving human rights problems.

Therefore, this book primarily serves educational purposes in the first place to navigate Human Rights and Rule of Law LL.M. students (I) in understanding the key definitions and fundamental functioning of international human rights law's border areas; (II) in synthesising their previously acquired knowledge on human rights; (III) in introducing supplementary definitions that are of special significance when facing human rights issues; and all in all, (IV) in giving a whole landscape on these inter-related segments of international public law, in addition to (V) granting considerable and complex knowledge on human rights. Thus, the ultimate aim of this book is to provide the readers with a thorough analysis on certain branches of international public law that have a strong relationship with international human rights law: international criminal law, international humanitarian law and international refugee law. When studying these branches, one needs to make a clear-cut distinction and define the precise scope of these fields in order to comprehend their common role: how to protect individuals and their human dignity with the toolbox of international public law?

9 Chetail, 2014, pp. 19–72; Béres, 2024a, pp. 31–49; Béres, 2024b, pp. 83–119.

Throughout the pages of this book, an overview is offered on the history of international criminal law, on international crimes, on the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda, on the International Criminal Court, on the history of humanitarian law, on the principles of humanitarian law (the principle of humanity, the principle of military necessity, the principle of distinction and the principle of proportionality), on the 1949 Geneva Conventions and their Additional Protocols I-III, on the distinction between migration law and refugee law as well as between the terms of “migrant” and “refugee”, on the 1951 Convention Relating to the Status of Refugees, on the principle of non-refoulement, and on some specific Central and Eastern European characteristics. Consequently, this book is not intended to be a textbook on international public law in general terms but rather a decent collection of papers on human rights related border areas of international public law.

As far as the target audience of this book is concerned, this edited volume may be worth the attention not only for Human Rights and Rule of Law LL.M. students, but it is also highly recommended for those undergraduate and Ph.D. students interested in conducting comprehensive research in international criminal law, humanitarian law or refugee law for their university thesis or Ph.D. dissertation. As this book is meant to represent high academic quality, it might as well offer some perspectives for fellow academic professionals, too.

Why is this book unique? One special feature of this edited volume is an outlook on the past and ongoing issues of Central and Eastern European States that are related to international criminal law (especially to the International Criminal Tribunal for the Former Yugoslavia), to international humanitarian law (especially war crimes in connection with the communist regimes) or to international refugee law (especially the refugee flows caused by the Russian-Ukrainian war ongoing since 2022). The academic perspective represented on the pages of this book is also meant to be specific since all of the authors of the chapters are from the Central and Eastern European region (i.e. Croatia, the Czech Republic, Georgia, Hungary, Poland, Serbia, Slovakia and Romania). Additionally, similar to the entire Human Rights and Rule of Law LL.M. book series, this edited volume unambiguously wishes to highlight the professional views of Central and Eastern European scholars, which might be a little underrepresented in current global academic debates.

This book includes eleven chapters: four chapters are in connection with the fundamentals of international criminal law, three chapters are devoted to international humanitarian law, another three chapters are related to international refugee law, while the last chapter is about special Central and Eastern European issues.

Chapter I, entitled “International criminal law I: The history of international criminal law”, written by Milan Škulić, is dedicated to the major antecedent events that led to the birth and rise of the branch of international criminal law, and it basically focuses on the development of international criminal justice. In this chapter, Škulić addresses (I) the trial of Peter von Hagenbach in Breisach in 1474; (II) the innovative idea of an international criminal court to hear war crime cases envisioned after

the Prussian-French war; (III) the post-World War I attempts to try Kaiser Wilhelm II before an international criminal tribunal seated in Leipzig; (IV) the unsuccessful aspirations of some international organisations between the two World Wars to create an international criminal court; (V) the establishment of the International Military Tribunal in Nuremberg and of the International Military Tribunal for the Far East after World War II, and also, the significance of the so-called Nuremberg principles that serve as a customary law foundation for international criminal law; (VI) the role the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda played in the evolution of international criminal justice; and (VII) the perspectives of international criminal law after the Rome Statute was adopted in 1998 and the permanent International Criminal Court was set up by its States Parties. Škulić concludes his chapter as

‘when it comes to the future of the International Criminal Court, one should be neither an optimist nor a pessimist, as for what lies ahead of the first permanent form of international criminal justice, the old truth holds that a glass halfway filled with water may be seen as either half-full or half-empty’.

We cannot help but agree with him: the eternal truth, *aurea mediocritas* shows the best approach to follow in this case, as realistic expectations lead to realistic conclusions in assessing the achievements and efficiency of international criminal justice.

Chapter II, entitled “International criminal law II: International crimes”, written by Lucija Sokanović, starts with (I) a detailed analysis of the distinction between domestic crimes and international crimes. In order to comprehend the roots of international criminal law, we need to depart from the customary law nature of international crimes: why is it necessary to have international criminal law as a separate body of law and part of international public law if all states have their own set of rules of criminal law under their domestic jurisdiction? In this chapter, the author adopts the view of Otto Triffterer that the distinctive element of international criminality can be described as ‘individuals can be punished even if there exists no corresponding punishability under their domestic law and jurisdiction or any other national legal system purporting to exercise jurisdiction’.¹⁰ This approach, which helps to fulfil the ultimate aim of international criminal law that core crimes ‘must not go unpunished’,¹¹ is applied throughout the book. In this vein, Sokanović gives an overview to the readers on the customary law roots of international crimes. Additionally, Chapter II deals with international crimes one by one: (II) the crime of genocide; (III) crimes against humanity; (IV) war crimes; and (V) the crime of aggression. In her paper, Sokanović departs from the contemporary definitions of core crimes provided under the Rome Statute of the International Criminal Court. In her discussion of the crime of genocide, she focused on the specific intent and

¹⁰ Triffterer, 2008, p. 25.

¹¹ Rome Statute of the International Criminal Court, 1998, Preamble.

actions by which genocide can be committed, while also highlighting the potential concurrency with crimes against humanity. Under the section on crimes against humanity, Sokanović examines the qualifications of the attack and the actions that constitute how crimes against humanity can be committed. Under the section on war crimes, the relationship between international criminal law and humanitarian law is analysed, and the author highlights the importance of the nexus of an international or a non-international armed conflict. The distinction between a crime of aggression and an act of aggression is examined under the last section of this chapter, whilst also providing the essentials on the acts of committing the crime of aggression.

Chapter III, entitled “International criminal law III: The legacy of the ICTY and the ICTR”, written by Ondřej Svaček, is about the ad hoc criminal tribunals set up by the United Nations Security Council in the early 90s. In his paper, Svaček firstly discusses (I) the creation, functioning and termination of the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda, and he also assesses the role of the United Nations Security Council. The advantages and disadvantages of the functioning of these tribunals helps us understand why international criminal law developed the way it eventually did in the 21st century. Secondly, Chapter III analyses (II) the jurisdictional framework of the ad hoc tribunals, their structure and procedural characteristics since one cannot understand the regime of international criminal law without studying jurisdictional matters and models. Thirdly, (III) the chapter deals with the ad hoc tribunal’s impact for the development of international criminal justice and points out the relevance and effect of their jurisprudence for the practice of their successors with special regard to the International Criminal Court. In this chapter, Svaček finally refers to (IV) selected landmark cases of the tribunals emphasising their jurisprudential legacy before the International Criminal Court. The paper concludes as ‘both tribunals gained their moment in the history of international criminal law’, while the author agrees with Robinson and MacNeil in the determination that ‘[i]t is most likely that ICL [international criminal law] would, by comparison, be greatly impoverished: thinner in details, weaker in scope, and perhaps still in its post-Nuremberg hibernation’.¹² By all means, the significance of the jurisprudential contribution of the ad hoc tribunals to international criminal justice simply cannot be overemphasised or underestimated.

Chapter IV, entitled “International criminal law IV: The International Criminal Court”, written by Piotr Hofmański, is undoubtedly an essential chapter of the book. The establishment of the first permanent International Criminal Court is one of the greatest and most symbolic achievements of the post-World War II international community besides the creation of the United Nations, and the International Criminal Court itself is the *ultima ratio* of the functioning of modern international criminal law. In his paper, Hofmański discusses certain characteristics of the court that are considered to be the most relevant for educational purposes. First of all, he focuses on (I) the creation of the first permanent International Criminal Court. Second,

12 Robinson and MacNeil, 2016, p. 209.

(II) the chapter concerns issues related to the scope of the court's jurisdiction and the triggering mechanisms, including the principle of complementarity and universal jurisdiction. And finally, (III) the paper also touches upon substantial criminal law issues, i.e. international crimes under the Rome Statute.

Chapter V, entitled “International humanitarian law I: The history of international humanitarian law”, written by Endre Domaniczky, marks the first chapter of the next pillar of this book, the one related to international humanitarian law. This chapter starts with (I) a conceptual analysis of certain terms of international public law: the meaning of *jus contra bellum*, *jus ad bellum* and *jus in bello* is explained. As one cannot understand humanitarian law without a (II) wider historical context, special consideration is paid under the next section to the early antecedents from ancient times to Jean Jacques Rousseau and to the 1863 Lieber Code, to the 1868 St Petersburg Declaration, to the 1899 and to the 1907 The Hague Conventions, as well as to the 1864, 1906 and 1929 Geneva Conventions. (III) The establishment of the International Committee of the Red Cross embodies a landmark of the evolution of humanitarian law, hence Domaniczky overviews the inspiring effect of the Solferino battle in Henry Dunant's idea, and the role and mandate of the non-governmental organisation today.

Chapter VI, entitled “International humanitarian law II: The principles of humanitarian law”, is written by Rebecca Lilla Hassanová. The author cites Pictet who observes that humanitarian law comprises two branches of law: the law of war and human rights.¹³ If we accept this approach, we may define humanitarian law as *lex specialis* that builds a bridge between armed conflicts and the legal demands of humanity and morality. In this vein, the paper reviews those principles that are considered as the customary law basis of humanitarian law. These are (I) the principle of military necessity; (II) the principle of humanity; (III) the principle of distinction of civilians and combatants; and (IV) the principle of proportionality. Hassanová analyses the principles of international humanitarian law in detail, including their position in the system of international law, from two perspectives. First, she derives their character from the classical theory of general principles of law, understood as one of the main sources of international public law. Second, the author distinguishes these principles from the cited general principles of law, referred to under Article 38 of the Statute of the International Court of Justice. According to Hassanová, the first view presents the similarities of the international humanitarian law principles, having the same function as the general principles of law, while the second view regards them as part of customary international law, which have been codified later into the treaty law.¹⁴

Chapter VII, entitled “International humanitarian law III: The 1949 Geneva Conventions and their Additional Protocols I-III”, written by Katarína Šmigová, examines the treaty regime background of humanitarian law. In this chapter, Šmigová explores (I) the adoption of the 1949 Geneva Conventions and its Additional Protocols in a historical and in a political context; (II) the functional term of armed conflict, international

13 Pictet, 1966, pp. 455–469.

14 Darcy, 2014, p. 140.

and non-international, respectively; (III) the rationale of avoiding the term “war” in treaty law instruments; (IV) the material scope of the 1949 Geneva Conventions and its Additional Protocols I-III including their main innovations and the emblem regime under Additional Protocol III; and (V) the relationship between contemporary Geneva law and the Rome Statute of the International Criminal Court focusing on the transformation between grave breaches of Geneva law and war crimes.

Chapter VIII, entitled “International refugee law I: Migration law v. refugee law. The perspectives of international law and EU law”, written by Eugen-Gheorghe Crişan, provides the readers with some general perspectives on migration law and refugee law. In his paper, Crişan discusses (I) the difference between the term “migrant” and the term “refugee”; (II) the material scope of international migration law and refugee law; similarly, he clarifies (III) the difference between refugees and other people in need of international protection with special regard to internally displaced persons; and finally, he weighs up (IV) the protection provided under the law of the European Union.

Chapter IX, entitled “International refugee law II: The 1951 UN Convention Relating to the Status of Refugees”, written by Nóra Béres, focuses on the treaty law basis of refugee law. The chapter starts with (I) an analysis of the adoption of the Refugee Convention under the auspices of the United Nations. Additionally, the paper comprises (II) a detailed examination of the definition of the term “refugee” under the Refugee Convention; it also argues (III) about the rights refugees are entitled to in accordance with the Refugee Convention. In her chapter, Béres highlights several relevant decisions from the case law of national and international courts and tribunals as well.

Chapter X, entitled “International refugee law III: The principle of non-refoulement”, written by Mariam Kevlishvili and Tamta Zaalishvili, analyses one of the fundamental principles of refugee law, i.e. the principle of non-refoulement. First of all, (I) the authors examine the definition under the Refugee Convention; subsequently, they reflect on (II) the case law of United Nations bodies and (III) the European Court of Human Rights as well as (IV) the case law of other regional international courts and national courts.

Chapter XI, entitled “Perspectives of certain Central and Eastern European States related to international criminal law, international humanitarian law and international refugee law”, written by Marcin Rau, is a special collection dedicated to some regional issues. In this chapter, a section is devoted to (I) Central and Eastern European States and international criminal law with special regard to the International Criminal Tribunal for the Former Yugoslavia; another section is about (II) issues related to Central and Eastern European States and international humanitarian law with special regard to war crimes (especially committed under the communist regimes); while the last section of the paper includes an analysis on the topic of (III) Central and Eastern European States and international refugee law with special regard to the refugee flows brought about by the Russian-Ukrainian war.

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