The global prosecution of core crimes under international law

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commissie, in het openbaar te verdedigen in de Agnietenkapel

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Christopher Soler
geboren te Sliema, Malta
Promotiecommissie

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Faculteit der Rechtsgeleerdheid
When I was in my fifth year of studies at the Faculty of Laws of the University of Malta, around March 1998, I submitted the title of my proposed thesis in partial fulfilment of the degree of Doctor of Laws which is necessary to practice the legal profession in Malta. The ICC Statute had not yet been signed. I recall that many classmates felt I was wasting a year of my life studying an area (branch) of law which hardly existed and which, in their words, had no prospects at all. I was told, in good faith by many, to focus on branches of law by virtue of which I could forge a career in Malta, namely maritime law, financial services and/or company law. My instinct, back then, was right. International criminal law flourished. After attending to the September 1997 Valletta Conference and to the June-July 1998 Rome Conference as a member of Non C’e’ Pace Senza Giustizia, besides proceeding to write my thesis entitled ‘Human Rights Violations As Crimes Under International Law’, in 1999 I also obtained a Master of Laws (LL.M.) with distinction in international criminal law from the University of Sussex, United Kingdom. I owe a lot to my lecturers Professor Richard Vogler, Dr. Emily Haslam and Professor Paul Omar. If I ever had concerns as to whether I should pursue my studies in international criminal law, they quelled them. I studied in a favourable environment at the beautiful university campus in Falmer and in the charming seaside city of Brighton, to which I am still attached, together with classmates of mine, some of whom, like Japanese scholar Tomoya Obokata, are now distinguished jurists.

After obtaining the warrant to practice the legal profession on the 27th June 2000, I was lucky enough to be able to spend various years working as defence counsel in trials by jury, high-profile criminal cases, extradition proceedings and constitutional cases before many courts, including Malta's Criminal Court, Malta's Court of Criminal Appeal (both in its inferior and in its superior jurisdiction), Malta's Constitutional Court, before criminal courts in Italy, Tunisia, the United States of America and, last but not least, the European Court of Human Rights and Fundamental Freedoms in Strasbourg, France. To this effect, I thank all my colleagues (Maltese lawyers) who, having had faith and belief in my abilities, delegated various tasks to me, including the representation of our clients before such courts. To date, as a result of my lecturing duties at the University of Malta, my deep association with criminal law and human rights law never subsided. At the very end of 2010, with the encouragement of Rector Emeritus of the University of Malta, Professor Juanito Camilleri, and of the Chancellor of the University of Malta, Professor David Attard, now Judge at the International Tribunal for the Law of the Sea, I decided to approach a prestigious university in The Netherlands to further my studies in international criminal law. Grossly enabled by the financial contribution of the University of Malta, of which I am the Director of Legal Services to date and which I thank for sponsoring my doctoral research, I chose to study in The Netherlands, the fatherland of international law.

I express appreciation to Professor Alfred Vella, the Rector of the University of Malta. Professor Vella was kind enough to allow me both to pursue my Ph.D. studies and to permit that I chair two important working groups under the auspices of the Maltese Presidency of the EU Council, namely COJUR (Public International Law) and COJUR-ICC (International Criminal Court) between January and June 2017. In pursuance of the above engagements, a word of thanks is due to the Government of Malta for appointing me both to chair such workshops and also as its delegate to the Assembly of State Parties to the Rome Statute of the International Criminal Court in its 15th session held in The Hague between the 16th and 24th November 2016. My quasi-judicial role as Chairperson of one of the three Chambers of the Refugee Appeals Board in terms of the Refugees Act, Chapter 420 of the Laws of Malta, a function I have performed since August 2013, has increased my awareness about the distressing human tragedies that underlie the consummation of serious crimes of concern to the international community. These experiences, whilst broadening my horizons, have complemented my research, particularly by exposing the social dimension and the human element which are at the epicentre of the corpus juris of international criminal law. Indeed, human beings can only be free by being humble servants of the law. Hence I endorse the legal maxim legum servi sumus ut liberi esse possimus.

In this opus there have been some special people who include Professor Kevin Aquilina, Professor Andrew Muscat, Professor Stephen Calleja, Adjunct Professor David Donat Cattin, Dr. Ivan Mifsud, Dr. Omar Grech and Dr. David Friggieri, whereas Ms. Martine van Trigt and Dr. Kim Bierhoff were always supportive in my operational and administrative needs at the University of Amsterdam, particularly in so far as the dissemination of relevant information, liaison with my supervisor and coordination for my oral defence ceremony were concerned. Likewise Ms. Daniela Agius Cachia and Ms. Denise Jones have assisted me in
various secretarial, administrative and logistical matters which were coordinated at the University of Malta, whereas Senior IT Officer I Mr. Roderick Spiteri kindly provided his technical expertise when I required help with my computers and laptops. Professor Aquilina illuminated me with his constructive critique of my work, especially from a structural and a methodological viewpoint, whereas Professor Muscat guided me wisely when I received negative remarks from my tutor. Professor Calleya’s perspectives on international relations and international affairs were thought-provoking in the context of the second Part of my thesis. Adjunct Professor David Donat Cattin, whose friendship dates back to our student days at the European Law Students’ Association, is a minefield of information and a staunch human rights defender. We share the same ideas and vision on the plague of impunity. My colleagues Omar and Ivan offered their advice throughout these years, whereas David provided guidance from Brussels on EU-related matters. I am grateful to those who showed a keen interest and listened to me when I described my project, occasionally offering words of encouragement. These include Professor Giuseppe Cataldi, Professor Giuseppe Giliberti, Professor Salvatore Zappala’, Associate Professor Joao Casqueira Cardoso, Dr. Michele Corleto, Ms. Irene ter Stege, Ms. Zahra Mousavi, Ms. Nienke de Lange, Ms. Liselot Egmond and Ms. Antonietta Trapani. Moreover, Assistant Professor Rosanne van Alebeek provided sound guidance for the purposes of the oral defence of my thesis. A word of thanks is hereby directed to the members of staff at the libraries where I conducted my research, namely the University of Amsterdam, the University of Malta, the University of Sussex (United Kingdom), the Institute of Advanced Legal Studies in Russell Square, London, the Universita’ La Sapienza of Rome, the University of Maribor, Slovenia (particularly Professor Dusan Lesjak), and the International Maritime Law Institute which is housed at the University of Malta. I am most grateful to Mr. Frank Bakker, publisher at T.M.C. Asser Press, for expressing the intention of T.M.C. Asser Press to publish a commercial edition of my thesis. This is something I look forward to. T.M.C. Asser Instituut contributes significantly to the dissemination and understanding of international criminal law. As an ultimate beneficiary of its informative ‘International Crimes Database’ website, I express words of praise to the T.M.C. Asser Instituut. Likewise, ‘DomCLIC’ came in very handy when I compiled Part IV of my thesis. In pursuance thereof, I thank The Hague Justice Portal, and the other partners involved in ‘DomCLIC’, for their priceless project.

I am very indebted to Professor Harmen van der Wilt for accepting to be my tutor, for guiding me so steadily, and for being frank with me when I went astray. Having been scolded by him occasionally was so important. It equipped me with sheer determination. On the other hand, his frequent words of praise filled me with the resilience which is so necessary for a Ph.D. candidate in a prestigious university such as the Universiteit van Amsterdam, a fascinating hub of intelligent academics, colleagues and friends. He has been focused, generous and understanding. I speak of him as a true gentleman and a brilliant legal mind. I cherish every moment spent with him and I am honoured to have been a recipient of his wisdom and a beneficiary of his sound guidance. He will always be a friend and colleague I will respect and look up to. His insights have been unparalleled to the extent that I can safely say that, without my tutor, I would certainly never have brought my ship home.

Thank you to my sister Sara and to my in-laws for triggering a smile on my face when I was too immersed in an ocean of lingering thoughts relating to my Ph.D., even and especially on Sundays. I have been truly blessed to have the parents I have, William and Natalie, nee’ Woods. They have been inspirational role models. From my decision to become a lawyer at the tender age of 11 to date, they have served as a bastion of respect and empowerment. They also financed my studies in the United Kingdom. Their unlimited love, which I will always reciprocate, was the light at the end of the tunnel. It popped up like an advert on a website when the going got very tough. My mother has always been there for me in an impeccable way, whereas my father, who is an accomplished architectural historian, has done the same, moreover being instrumental in compiling the bibliography of this work. Thinking about my parents automatically reminds me of the saying ‘you can’t light a candle to the sun’. Last but not least, a massive thank you goes to my wife Christine, nee’ Dyer, and our children Daniel and Nina. My nuclear family was patient enough to endure my love affair with international criminal law throughout this journey of mine. I just hope that our beloved children, to whom I dedicate this thesis, can live in a better world which manages to suppress, or at least curtail, that phenomenon which poses a great threat to international peace and security, this being violent crime which remains unpunished. It is with this mindset, in this spirit and amidst such ethos, that I wrote my thesis. I can only hope that it could be tantamount to a modest contribution to the dynamic and stimulating field of international criminal law, the importance of which I shall strive to convincingly assert.
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Chapter 25: Concluding observations and final remarks

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**Blogs:**
- EJIL Talk!  The Blog of the European Journal of International Law
- iLawyer  A Blog on International Justice

**Institutions:**
- ACIL  Amsterdam Centre for International Law
- ACJHR  African Court of Justice and Human Rights
- ACmHR  African Commission on Human and Peoples’ Rights
- ACtHPR  African Court of Human and Peoples’ Rights
- AI  Amnesty International
- AIDP  *Association Internationale de Droit Penal*
- ASIL  American Society of International Law
- ASP  Assembly of State Parties to the Rome Statute of the International Criminal Court
- BIICL  British Institute of International and Comparative Law
- BWCC  Bosnian War Crimes Chamber
- CAR  Special Criminal Court
- CILRAP  Centre for International Law Research and Policy
- CoE  Council of Europe
- EACmHR  Extraordinary African Chambers
- ECCC  Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea
- ECFI  Court of First Instance of the European Communities
- EC  Court of Justice of the European Union
- ECtHR  European Court of Human Rights and Fundamental Freedoms
- EPPO  European Public Prosecutor’s Office
- ESPO  Ethiopian Special Prosecutor’s Office
- ESPPSC  East Timor Special Panels for Serious Crimes
- EU  European Union
- FIDH  *Fédération Internationale des Ligues des Droits de l’Homme*
- FRA  European Union Agency for Fundamental Rights
- GULC  Georgetown University Law Center
- HAIL  The Hague Academy of International Law
- HCSS  Hybrid Court for South Sudan
- HRC  Human Rights Committee
- HRW  Human Rights Watch
- IACmHR  Inter-American Commission on Human Rights
- IACtHR  Inter-American Court of Human Rights
- IBA  International Bar Association
- ICC  International Criminal Court
- ICD of the HC of Kenya  International Crimes Division of the High Court of Kenya
- ICD of the HC of Uganda  International Crimes Division of the High Court of Uganda
- ICIJ  International Court of Justice
- ICRC  International Committee of the Red Cross
- ICT of Bangladesh  International Crimes Tribunal (Bangladesh)
- ICTY  International Criminal Tribunal for the Former Yugoslavia
- ICTR  International Criminal Tribunal for Rwanda
- IDI  *Institut de Droit International*
- IHT  Iraqi High Tribunal
- ILA  International law Association
- ILCC  International Law Commission
- KRP  Kosovo Regulation 64 Panels
- KSC  Kosovo Specialist Chambers
MEDAC  Mediterranean Academy of Diplomatic Studies
OAS  Organization of American States
OLAF  European Anti-Fraud Office
OTP  Office of the Prosecutor of the International Criminal Court
PCIJ  Permanent Court of International Justice
PRI  Peace Research Institute
SCSL  Special Court for Sierra Leone
STL  Special Tribunal for Lebanon
SWCC  Serbian War Crimes Chamber
*T.M.C. Asser Instituut*  TMC AI
TBA  Texas Bar Association
UN  United Nations
UNAFEI  United Nations Asia and Far East Institute for the Prevention and the Treatment of Offenders
UNC  United Nations Charter
UNCHR  United Nations Commission on Human Rights
UNG A  United Nations General Assembly
UNODC  United Nations Office on Drugs and Crime
UNSC  United Nations Security Council
UNTAET  United Nations Transitional Administration in East Timor
UvA  University of Amsterdam

**Journals:**

AHRLJ  African Human Rights Law Journal
AHRLR  African Human Rights Law Reports
AJICL  Arizona Journal of International and Comparative Law
AJIL  American Journal of International Law
AJLS  African Journal of Legal Studies
AJPIL  Austrian Journal of Public and International Law
ALJ  Australian Law Journal
APSR  American Political Science Review
ASR  African Studies Review
AUILR  American University International Law Review
AULR  Auckland University Law Review
BCICLR  Boston College International and Comparative Law Review
BJIL  Berkeley Journal of International Law
BUILJ  Boston University International Law Journal
BYIL  British Yearbook of International Law
CgJIL  Chicago Journal of International Law
ChJIL  Chinese Journal of International Law
CIJ  Cornell International Law Journal
CJEL  Columbia Journal of European Law
CJTL  Columbia Journal of Transnational Law
CLF  Criminal Law Forum
CLJ  Cambridge Law Journal
CLP  Current Legal Problems
CLR  California Law Review
CLR  Criminal Law Review
CLSC  Crime, Law and Social Change
DJCIL  Duke Journal of Comparative and International Law
EILR  Emory International Law Review
EJCCLCJ  European Journal of Crime, Criminal Law and Criminal Justice
EJIL  European Journal of International Law
EJLS  European Journal of Legal Studies
EUCLR  European Union Constitutional Law Review
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<th>Abbreviation</th>
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<tr>
<td>FILJ</td>
<td>Fordham International Law Journal</td>
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<td>YIHHL</td>
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**Publishers:**

- AIP: Amnesty International Publications
- Ashgate Publishing Limited
- BEP: Berkeley Electronic Press
- BLSR: Berkeley Law Scholarship Repository
- Brill: Koninklijke Brill N.V.
- CAP: Carolina Academic Press
- CIUP: Cornell University Press
- CMP: Cameron May Publishing Limited
- CP: Clarendon Press
- CPL: Cavendish Publishing Limited
- CUP: Cambridge University Press
- D & H: Dunker & Humboldt GmbH
- EE: Edward Elgar Publishing Limited
- FP: The Foundation Press
- Giuffre: Giuffre` Editore S.p.A.
- GPO: Government Printing Office
- GUP: Goettingen University Press
- HHRJ: Harvard Human Rights Journal
- HP: Hart Publishing, Bloomsbury
- Intersentia Publishers
- JHUP: John Hopkins University Press
- JW & SL: John Wiley & Sons Limited
- KLI: Kluwer Law International
- LHPS: Long House Publishing Services
- Longman Publishing Group
- Maklu Publishers
- MNP: Martinus Nijhoff Publishers
- MS: Mohr Siebeck GmbH & Co. KG
- MUP: Manchester University Press
- OPI: Oceana Publications Inc.
- OUP: Oxford University Press
- PB: Penguin Books
- PE: Pearson Education Limited
- PULP: Pretoria University Law Press
- RLP: Rowman and Littlefield Publishers
- Round Hall Limited
- S & M: Sweet & Maxwell
- Sijthoff: A.W. Sijthoff International Publishing Company B.V.
- Springer: Springer-Verlag
- SUP: Stanford University Press
- T & F: Taylor & Francis Group
- TMC AP: T.M.C. Asser Press
- TOAEP: Torkel Opsahl Academic E-Publisher
- TP: Transnational Publishers Incorporation
- TRAL: Thomson Reuters (Professional) Australia Limited
- Vathek Publishing
- WK: Wolters Kluwer
- YUP: Yale University Press
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- UNSC Resolution 1593 of 31st March 2005
- UNSC Resolution 1638 of 11th November 2005
- UNSC Resolution 1674 of 28th April 2006
- UNSC Resolution 1757 of the 30th May 2007
- UNSC Resolution 1918 of 26th July 2008
- UNSC Resolution 1970 of 26th February 2011
- UNSC Resolution 1973 of 17th March 2011
- UNSC Resolution 2015 of 24th October 2011
- UNSC Resolution 2316 of 9th November 2016

**Statutes, Rules, Regulations and Other Legal Instruments**

- Elements of Crimes of the International Criminal Court
- Rome Statute of the International Criminal Court
- Rules of Procedure and Evidence of the International Criminal Court
- Statute of the International Court of Justice
- Statute of the International Criminal Tribunal for Rwanda
- Statute of the International Criminal Tribunal for the Former Yugoslavia
- Statute of the Special Court for Sierra Leone
Statute of the Special Tribunal for Lebanon
United Nations Transitional Administration in East Timor Regulation 2000/15 on the Establishment of Panels with Exclusive Jurisdiction Over Serious Criminal Offences

Treaties, Conventions and Agreements

1648 Westphalian Peace Treaties
1907 General Treaty of Peace and Amity
1907 Hague Convention XII
1919 Versailles Treaty
1922 German-Polish Upper Silesian Convention
1929 Convention for the Suppression of Counterfeiting
1933 Montevideo Convention on the Rights and Duties of States
1945 Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis
1945 United Nations Charter
1946 Constitution of the International Labour Organization
1948 Convention on the Prevention and Punishment of the Crime of Genocide
1948 Universal Declaration of Human Rights
1949 Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea
1949 Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field
1949 Geneva Convention Relative to the Protection of Civilian Persons in Time of War
1949 Geneva Convention Relative to the Treatment of Prisoners of War
1950 European Convention for the Protection of Human Rights and Fundamental Freedoms
1950 Sixth Protocol to the European Convention on Human Rights and Fundamental Freedoms Concerning the Abolition of the Death Penalty
1951 Convention Relating to the Status of Refugees
1952 European Communities Convention
1952 Arab League Agreement
1955 UN Standard Minimum Rules for the Treatment of Prisoners
1957 European Convention on Extradition
1958 Geneva Convention on the High Seas
1958 European Communities Convention
1959 European Convention on Mutual Assistance in Criminal Matters
1961 Single Convention on Narcotic Drugs
1961 Vienna Convention on Diplomatic Relations
1962 Benelux Treaty on Extradition and Mutual Assistance in Criminal Matters
1963 Convention on Offences and Certain Other Acts Committed on Board Aircraft
1966 International Covenant on Civil and Political Rights
1967 Protocol to the Convention Relating to the Status of Refugees
1968 Convention on the non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity
1969 Inter-American Convention on Human Rights
1969 Vienna Convention on the Law of Treaties
1970 Convention for the Suppression of Unlawful Seizure of Aircraft
1970 European Convention on the International Validity of Criminal Judgments
1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation
1971 Convention on Psychotropic Substances
1971 Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation
1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents
1974  European Convention on the non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity
1974  United States of America Supplementary Extradition Treaty with Canada
1975  Additional Protocol to the 1957 European Convention on Extradition
1975  United States of America Supplementary Extradition Treaty with Spain
1976  Extradition Treaty between Canada and the United States of America
1977  European Convention on the Suppression of Terrorism
1977  Two Additional Protocols to the Geneva Conventions
1978  Extradition Treaty Between the United States of America and Germany
1979  Convention Against the Taking of Hostages
1980  Convention on the Physical Protection of Nuclear Material
1981  African (Banjul) Charter of Human and Peoples’ Rights
1982  United States of America Extradition Treaty with Costa Rica
1983  Extradition Treaty United States of America – Italy
1983  United States of America Extradition Treaty with Jamaica
1984  Protocol No. 7 to the European Convention on Human Rights
1984  United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
1985  Inter-American Convention to Prevent and Punish Torture
1985  United States of America Supplementary Extradition Treaty with United Kingdom
1986  United States of America Supplementary Extradition Treaty with Germany
1987  United States of America Supplementary Extradition Treaty with Belgium
1987  South Asian Association for Regional Cooperation Regional Convention on Suppression of Terrorism
1988  Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances
1989  Convention Against the Recruitment, Use, Financing and Training of Mercenaries
1990  Charter of Paris for a New Europe
1990  Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime
1990  Commonwealth Scheme for the Rendition of Fugitive Offenders
1990  Convention Implementing the Schengen Agreement of 14 June 1985 Between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and French Republic on the Gradual Abolition of Check at the Common Borders
1990  United Nations Model Treaty on Extradition
1991  Convention on the Marking of Plastic Explosives for the Purpose of Detection
1994  Economic Community of West African States Convention on Extradition
1994  Irish Extradition (Amendment) Act
1996  European Union Convention Relating to Extradition Between Member States
1996  European Union Convention Relating to Extradition Between Member States
1997  Convention for the Suppression of Terrorist Bombings
1997  Treaty of Amsterdam Amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts
1998  European Convention on the Protection of the Environment Through Criminal Law
1999  Convention for the Suppression of the Financing of Terrorism
1999  Lome’ Peace Accord
1999  Organization of African Unity Convention on the Prevention and Combating of Terrorism
2000  European Union Charter of Fundamental Rights
2000  Protocol Against the Smuggling of Migrants by Land, Sea and Air supplementing the United Nations Convention Against Transnational Organized Crime
2001  Council of Europe Convention on Cybercrime
2001  Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, Supplementing the 2000 United Nations Convention Against Transnational Organized Crime
2002  Inter-American Convention Against Terrorism
2002  Agreement on the Privileges and Immunities of the International Criminal Court
2002  London Scheme for Extradition Within the Commonwealth
2003  United Kingdom Extradition Act
2003  United Nations Convention Against Corruption
2004  Negotiated Relationship Agreement between the International Criminal Court and the United Nations
2005  Council of Europe Convention on Action Against Trafficking in Human Beings
2006  Agreement between the International Criminal Court and the European Union on Cooperation and Assistance
2007  Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community
2007  Treaty on the Functioning of the European Union
2008  Malabo Protocol Establishing the African Court of Justice and Human Rights
2012  Consolidated Version of the Treaty on the Functioning of the European Union
2016  Agreement Between the Fuerzas Armadas Revolucionarias de Colombia and the Government of Colombia