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International criminal trials: A normative theory

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PREFACE AND ACKNOWLEDGEMENTS

The bulk of the research for this book was completed during the six years I spent working at the University of Amsterdam (UvA) – first as a doctoral candidate, then as a research fellow and managing editor of the International Expert Framework for International Criminal Procedure (IEF). Hopefully for the better, the result is strikingly different from the book I was set to write. The gap between the two is worth a journey of self-discovery – that is, learning about own limitations. Such findings were most revealing, but I have also learnt that there exist few intellectual pleasures superior to the satisfaction of arriving at an unrehearsed conclusion after moving gropingly in the dark for weeks and months.

The objectives of this study and my vision of international criminal trials have undergone substantial changes along the way. First, ceaseless legislative, jurisprudential, and scholarly developments in the booming field of international criminal procedure make the topic a ‘moving target’. The speed with which this target is moving leaves no room for definitive conclusions and petrified dogmas. On numerous instances, the developments are not only important enough to warrant re-evaluation of what we think we know about international criminal justice. They are also of such a nature as to shift our very perceptions of relevance. On a daily basis, they invite researchers to do no less than ‘change lenses’.

Second, the hypotheses and ideas underlying this research were in a state of flux due to my involvement in other projects over the past few years. The initial concept of identifying ‘general rules’ and ‘principles’ of international criminal procedure in the domain of the organization of trial process overgrew the bounds of that phase alone and took the life of its own. It was extended to the entire nascent discipline of international criminal procedure and developed into a comprehensive project. This research was implemented by the IEF in 2009-2013 and led to a separate publication – *International Criminal Procedure: Principles and Rules* (Oxford University Press, 2013). Undeniably, there are links between the present book and the IEF volume. But the distinct objectives of the two projects resulted in different methodologies as well as the scope and setup of the research. Further, some of the perspectives and topics initially envisaged for inclusion in the present study have appeared (or hopefully will appear) as separate publications and are not covered here. If writing can be compared to sculpting, my hope is that these cut-offs have done the present book more good than harm.

This work could not have been completed without support and advice of a number of individuals to whom I am profoundly indebted. First of all, I thank the originator and supervisor of this research Prof. Göran Sluiter and my daily mentor Dr. Menno Dolman for their intellectual input and personal investment in this project as well as for their patience. I am grateful for their relentless reminders about the virtues of the ‘Hemingway style’, which I’ve clearly failed to master, and that ‘perfect is the enemy of good’. Despite my disbelief in the latter precept, I have engaged with the ‘enemy’ and came to appreciate their wise counsel especially in the final stages of writing and editing. In particular, I thank Göran for his trust in me and for setting an example of a critical and dynamic scholar with keen eye to practice. I was provided with excellent opportunities to freely pursue my academic interests, to participate in other research projects, and to publish next to my thesis. At all stages, Menno acted in the capacity of a *de facto* co-supervisor. His caring that the finalization of the book is not deferred endlessly is enormously appreciated.

I am grateful to my former colleagues at the department of criminal law of the UvA Law School, who became my ‘host family’ upon my arrival in the Netherlands, for all the support in the course of these years. Annemieke van Verseveld, Jarinde Temminck Tuinstra, Denis Abels, Kelly Pitcher, Karel de Meester, Henna Redan, Harmen van der Wilt, Maike Steen, Cassandra Steer, Gaetano Best, Krit Zeegers, Frederiek de Vlaming, Tom Blom, Arjen van den Herik, and others – this book is yours as much as it is mine. I also owe special thanks

to Nisan Sarican of the UvA law library: his natural friendliness and willingness to assist with acquiring all relevant (and not so relevant but always intriguing) titles have made my research a more carefree business. In the initial stages, I benefitted enormously from conversations with Prof. Bert Swart. His unassuming mentorship, kindness, and encouragement are fondly remembered.

I am also greatly indebted to my new colleagues in the Department of Criminal Law and Criminology and in the Center for International Criminal Justice, VU University of Amsterdam, for the extraordinarily pleasant, vibrant, and inspiring working environment. The exceptional support of Elies van Sliedregt in the final stages of preparing this book was more than crucial to its fruition. Besides, I am thanking Barbora Holá, Alexandra Popova, Jan Galdiga, and Alasdair Shaw for their attentive reading of, and invaluable comments on, the parts of this book. Jan also kindly and ably assisted me in compiling the preliminaries, for which I am very grateful. I thank my wonderful ‘paranimfen’, Gaetano Best and Elinor Fry, for their moral support, for taking care of me in the lead up to the ‘big day’, and for translating and editing the Dutch summary. Last but not least, Egbert Clement deserves special credit for designing the book cover.

My thinking about international criminal law and procedure has tremendously benefitted from the expertise of the IEF members, in the course of more than three years of collaboration on that project. I owe intellectual debts to each one of them individually, but would especially like to mention my colleagues on the steering/editorial board. It was also a great privilege and true pleasure to be learning from the members of ‘my’ working group 5 on ‘Trial Process’ – Suzannah Linton, Nancy Combs, Guido Acquaviva, Mikaela Heikkilä, and Yvonne McDermott, whose scholarly contributions I admire. Thank you so much for our discussions and the team spirit! Both within and outside the IEF, I have drawn inspiration from the work of, and conversations with, Mirjan Damaška, Håkan Friman, Mikaela Heikkilä, John Jackson, Máximo Langer, Frédéric Mégret, Jens David Ohlin, Carsten Stahn, Harmen van der Wilt, and many others.

My understanding of the ‘life’ of international criminal procedure as presented here would have been much more of a view from an ivory tower, if not for the kind cooperation provided by several dozen practitioners whom I had a chance to meet and interview during my research visits to the ICTR (Arusha, Tanzania, May-June 2008), SCSL (Freetown, Sierra Leone, October 2009 and The Hague, Netherlands, December 2009), and ECCC (Phnom Penh, Cambodia, November 2009). At the ICTR, I thank the former President Denis Byron, Judge Møse, Judge Weinberg de Roca, Judge Sergei Alekseevich Egorov, Judge Asoka Nihal de Silva, Judge Emile Short, as well as several other judges and legal officers who wished to remain anonymous; then Deputy Registrar Everard O’Donnell; Prosecutor Hassan Bubacar Jallow and his staff; and a great number of defence (co-)counsel. Their generosity with time and their willingness to share with me their opinions about the ‘procedure at work’ made my stay in Arusha highly instructive and unforgettable. At the SCSL, I am grateful to judges and legal officers in the Chambers, both in Freetown and The Hague, as well as to the prosecution and defence counsel, for agreeing to share with me their practical perspectives on the SCSL procedure. During the visit to the ECCC, invaluable cooperation was provided by the then acting international Co-Prosecutor William Smith and prosecution lawyers on both Cambodian and international side, as well as by staffers of the Defence Support Section and defence lawyers, both Cambodian and international. Of course, all errors and shortcomings of this book remain my sole responsibility.

On a personal front, I owe much more than what mere words can express to my loves Sinuhê and Sophia, for all care, support, and necessary (as much as irresistible) distractions from work that injected a much-needed balance in my life’s equation. You were entitled to far more of my attention during the nights, weekends, and holidays which I spent cocooned in my own thoughts about the work on this and other projects. Of course, I can’t thank my

parents, Nina and Vladimir, enough: I would be nowhere without your love and devotion. Without you, my friends—you know who you are—I could not have walked this way alone.

Finally, this book is lovingly dedicated to my grandfather Pyotr Vasilievich Zasukhin who has been waiting for it more than anyone else. In 1942, at the age of 17, he was recruited to Red Army directly from school bench and sent to the Ukrainian front where he served as a foot soldier until getting heavily injured in 1943. It is his testimonies of the scourge of war that sparked my interest in the Nuremberg trial, legal responses to atrocities, and international criminal justice.

Sergey Vasiliev
Amsterdam, 27 February 2014