

Understanding International Criminal Law: Notes on Theoretical Foundations and Judicial Practice

1. Main Aspects of International Criminal Law

International criminal law (ICL) as a relatively new legal discipline should combine the best features of (public) international law and criminal law, both substantive and procedural. It has its roots in the international treaties and customs (customary law). Generally, it leads to the right or duty of municipal systems to prosecute for internationally defined crimes or to extradite to another municipal system of law for such prosecution - that is commonly known in criminal procedure as the principle *aut dedere, aut judicare*². For instance, Cherif Bassiouni argues that international criminal law is “a complex legal discipline that consists of several components bound by their functional relationship in the pursuit of its value-oriented goals. These goals include the prevention and suppression of international criminality, enhancement of accountability and reduction of impunity, and the establishment of international criminal justice. Each of these components derives from one or more legal disciplines and their respective branches, including international law, national criminal law, comparative criminal law and procedures, and international and regional human rights law. [...]. Thus, there is something that can be called the system of ICL, which derives from the functional relationship that exists between the different components of this discipline and the value – oriented goals it seeks to achieve”³.

¹ Dr prawa, adiunkt w Katedrze Prawa Karnego na Wydziale Prawa i Administracji Uniwersytetu Opolskiego.

² “*Civitas maxima*” of international criminal law. It was proposed by Hugo Grotius in 1964 as: *aut dedere aut punire*, then modified as : *aut dedere aut judicare* or *aut dedere aut penere*. See: M. Cherif Bassiouni, *International Criminal Law*, Volume I, Sijthoff and Noordhoff 1980, p. 24.

³ *International Criminal Law* (Third Edition), Volume I, Source, Subjects, and Contents edited by M. Cherif Bassiouni, M. Nijhoff Publishers, 2008, p. 3.

More precisely, international criminal law is a product of convergence between international aspects of national (municipal) criminal law and the penal (criminal) aspects of international law. Therefore, its origin and development should be traced through these two separate branches of law, even though it is nowadays truly seen as a branch of its own right – *sui generis*⁴. In these terms, international aspects of national criminal law consist of extraterritorial jurisdictional norms, conflicts of criminal jurisdiction between states and between a state and an international legal organ, and the international sources of law applicable to modalities of international cooperation in penal matters, or the “indirect enforcement system”. At the same time, the penal aspects of international law derive from “conventions”, “customs”, and “general principles of law”. Such aspects include: international crimes, elements of international criminal responsibility, the procedural aspects of the “direct enforcement system” of ICL, and also certain aspects of the enforcement modalities of the “indirect enforcement system” of ICL. Furthermore, the scope of these penal aspects of international law has expanded, leading to overlaps with the international law aspects of national criminal law. According to Bassiouni, this is particularly evident in areas that historically have been the domain of national criminal law, such as the “general part” of domestic criminal law, which has become part of the “general principles of law”, and which is applied in international judicial proceedings, or the “direct enforcement system”⁵.

2. Transnational Criminal Law (Horizontal Approach)

By the “horizontal approach” should be understood all of forms of modern international cooperation among states to enforce their own national criminal law. In this context, international criminal law is often called transnational criminal law, characterised by the trans-boundary dimension. It includes such forms of inter-state cooperation in criminal matters as mutual legal assistance, procedure in extradition (or within the EU the European Arrest Warrant (EAW)), transfer of criminal proceedings, recognition and execution of foreign

⁴ G. Werle, *Principles of International Criminal Law*, T.M.C. Asser Press 2005. R. Haveman, O. Olusanya (eds.), *Sentencing and Sanctioning in Supranational Criminal Law*, Intersentia 2006; Christoph J.M. Safferling, *Towards an International Criminal Procedure*, Oxford University Press 2007; E.S. Podgor, R.S. Clark, *Understanding International Criminal Law*, LexisNexis 2008; H. Satzger, *Internationales und Europäisches Strafrecht*, Ludwig-Maximilians – Universität München 2011.

⁵ M. Cherif Bassiouni (ed.), *International Criminal Law*, op.cit., p. 5–6.

penal decisions, and judgements or transfer of sentenced persons. Its subject matter practically covers a catalogue of serious crimes, characterised by a foreign element that is crossing the national frontiers and for this reason regarded as transnational crime or criminality⁶. Some types of crimes, like trafficking in human beings or narcotic drugs, money laundering, terrorism, foreign corrupt practices are forbidden by treaty regimes but not regarded (yet) as to be punished before international tribunals. So, there is seen implementation of the criminal aspects of international law into national legal orders⁷.

3. International Criminal Law (Vertical Approach)

By the “vertical approach” to international criminal law should be understood international cooperation in prosecution and punishment of those who violate norms that concern the international legal order and have been categorised by customary law or treaty as international crimes. It relates directly to the efforts of creating international criminal justice. Its subject concerns international crimes – *delicta iuris gentium* – which have been categorised by treaties or customs, being the main sources of public international law. This body of law covers so called ‘core’ crimes under international jurisdiction in accordance with the universality principle (universal jurisdiction)⁸. In this regard, one should note the work of International Criminal Court (ICC) and *ad hoc* international/internationalised criminal tribunals and courts⁹. For instance, the Preamble of the ICC Statute reads that international crimes shall include “the most serious crimes of concern to the international community as a whole” and such crimes “must not go unpunished” as well as “their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation”. Further, under Article 5 of the ICC Statute, the Court has jurisdiction with respect to the following crimes:

- a) The crime of genocide;
- b) Crimes against humanity;
- c) War crimes;
- d) The crime of aggression.

⁶ N. Boister, *Transnational Criminal Law?*, EJIL (2003), Vol. 14, no. 5, pp. 953–976.

⁷ R. Cryer, H. Friman, D. Robinson, E. Wilmshurst, *op.cit.*, p. 1–12; N. Boister, *Transnational Criminal Law?*, *op.cit.*, p. 953–976.

⁸ C. de Than, E. Shorts, *International Criminal Law and Human Rights*, London 2003, p. 41–44.

⁹ *Ibidem*.

Still, however, an alternative may be the exercise of national jurisdiction pursuant to the principle of complementarity.

In this meaning, international criminal law is closely related to other areas of public international law. Specifically, there is a necessity of understanding human rights law, international humanitarian law and also the law relating to State responsibility. At this point, one should mention the first *ad hoc* tribunals, i.e., the Nuremberg International Military Tribunal (1945)¹⁰ and the International Military Tribunal for the Far East (1946). Both judicial bodies have become precedents leading to further development of international legal norms, governing the international criminal trials. These first 'internationally constituted' tribunals laid down a foundation for the principle of individual criminal responsibility in the case of grave breaches of international human rights law and humanitarian law. Also, they gave an impetus for establishing the next *ad hoc* international/internationalised criminal courts or tribunals and the International Criminal Court at The Hague (2002), as a permanent judicial body¹¹. In contrast to the tribunals formerly established, the contemporary international criminal justice system has developed a new pattern of jurisdiction applying mixed sources of international and national law. The present international/internationalised criminal courts and tribunals have to be composed of highly qualified judges, who are able to rely not only on the legal norms recognised as international law but also on the norms of the national legal orders¹².

Because international criminal law originated in public international law its sources are those listed in the art. 38 (1) of the Statute of International Court of Justice: treaties, customary international law, general principles of law and, as a subsidiary means for the determining the law, judicial decisions and writings of publicists. These sources of public international law are repeated in Art. 21 (1) of the ICC Statute which provides that:

¹⁰ E.g., D. Bloxham, *Genocide on Trial: War Crimes, Trials and Formation of Holocaust History and Memory*, Oxford 2001.

¹¹ E.g., D. Shelton (ed.), *International Crimes, Peace, and Human Rights: The Role of the International Criminal Court*, Transnational Publishers NY 2000.

¹² E. S. Podgor, R.S. Clark, op.cit., p. 205–226; Ph. Sands (ed.), *From Nuremberg to the Hague...*, op.cit., *passim*; Cesare P.R. Romano, A. Nollkaemper, J.K. Kleffner (eds.), *Internationalized Criminal Courts. Sierra Leone, East Timor, Kosovo, and Cambodia*, Oxford University Press 2005; S.R. Ratner, J.S. Abrams, J.L. Bischoff, *Accountability for human rights atrocities in international law. Beyond the Nuremberg Legacy*, Oxford University Press 2009.

“The Court shall apply:

- a) In the first place, this Statute, Elements of Crimes and its Rules of Procedure and Evidence;
- b) In the second place, where appropriate, applicable treaties and the principles and rules of international law, including the established principles of the international law of armed conflict;
- c) Failing that, general principles of law derived by the Court from national laws of legal systems of the world including, as appropriate, the national laws of States that would normally exercise jurisdiction over the crime, provided that those principles are not inconsistent with this Statute and with international law and internationally recognized norms and standards.”

The ICC may also apply principles and rules of law as interpreted in its previous decisions. Also, the application and interpretation of law pursuant to Article 21 of the ICC Statute must be consistent with internationally recognized human rights law, and be without any adverse distinction founded on grounds such as gender, age, race, colour, language, religion or belief, political or other opinion, national, ethnic or social origin, wealth, birth or other status (Article 21 (2) and (3) respectively).

4. International Criminal Justice and Globalisation

In the global context, both International (Criminal) Courts and Tribunals have already established a bridge between differing legal systems, with a view to creating common rules of international criminal procedural law. Judge W. Schomburg has noted that the International Tribunals “have safeguarded the rights of the accused while also protecting the fundamental rights of victims. By adopting all the detailed facets of fair trial rights, the Tribunals have not only enhanced their own legitimacy but also set a minimum standard with which any legitimate international criminal court must comply. In our globalised society, the importance of this standard, which has made the concept of justice more concrete at an international level, should not be underestimated”¹³.

In fact, international criminal justice has enhanced inter-state cooperation in combating the most serious international crimes, and facilitated the devel

¹³ W. Schomburg, *The Role of International Criminal Tribunals in Promoting Respect for Fair Trial Rights*, *Northwestern Journal of International Human Rights* (2009), Volume 8, Issue 1, p. 6.

opment of international criminal procedure. This question is especially linked with international fair trial standards, in the meaning of fundamental principles of international criminal procedure (procedural *jus cogens* norms) which should be applied not only at the global level, but also at regional levels¹⁴. The Universal Declaration of Human Rights (UDHR, 1948), the International Covenant on Civil and Political Rights (ICCPR, 1966) and the ECHR system form *in principio* a legal basis for such prominent fair trial legal guarantees.

Because of the quite strong tendency towards globalization of criminal justice, reference should be also made to the concept of global justice. Global justice may be “loosely defined as the total of initiatives seeking to ensure that all human persons regardless of their location are offered an adequate level of protection under the law”¹⁵. In view of the emerging law of the global community, one may truly admit that “we are coming from a traditional inter-state, anorganic-egalitarian perspective – that, emphasizing the sovereignty of states and their legal equality, configured the system of implementation of international law-enforcement as a system capable of functioning between the offended state and the offending state, exclusively on the basis of ‘equality’ – to an organic and vertical global law-enforcement system”¹⁶.

5. Perspectives for International Criminal Justice

International criminal justice is still in progress. It is based very much on international legal norms which are not uniform, and there are not consistent views as to its application. Nonetheless, these rules derive from ancient times, having their roots in treaties and customs/customary law, the first example being when the members of international community decided to cooperate together under the Congress of Vienna (1814–1815). Then, the League of Nations (1919–1946) and the United Nations (1945) continued the idea of closer cooperation among nations in the interests of international justice at the

¹⁴ Cf. M. Klamberg, *What are the Objectives of International Criminal Procedure? - Reflections on the Fragmentation of a Legal Regime* (March 19, 2010). NJIL, Vol. 79, No. 2, p. 279–302, 2010; Available at SSRN: <http://ssrn.com/abstract=1574969>.

¹⁵ R. Letschert, J. van Dijk, *New Faces of Victimhood: Reflections on the Unjust Sides of Globalisation*, in: R. Letschert, J. van Dijk (eds), *New Faces of Victimhood: Globalisation, Transnational Crimes and Victims Rights* (Springer, 2011), p. 8.

¹⁶ G.Z. Capaldo, M. Nino, *Globalization of Law Enforcement Mechanism: Issues of Legality and Legitimacy*, in: *International Criminal Law (Third Edition)*, Vol. II, Edited by M. Cheriff Bassiouni, M. Nijhoff 2008, p. 47.

global level.¹⁷ Such State interests are strictly associated with the question of pursuing international justice. In reference to international criminal justice, M. Cherif Bassiouni maintains, that: “The term international criminal justice is vague. What is contemporarily meant by it is the application of the principle of accountability for certain international crimes, whether before an international or national judicial body. Such body must be duly constituted and impartial, and its legal processes must be fair in accordance with international legal standards. Whether such a judicial body applies international or national laws and procedures is not a narrow legalistic question. Instead, what is crucial is whether international crimes, which have achieved the *jus cogens* status¹⁸, are effectively criminally prosecuted irrespective of the type of legal forum before which these issues are adjudicated. [...]. Whether these international crimes are charged in accordance with their international labels and elements or in accordance with any equivalent domestic crime is of lesser importance to the attainment of dual goals of accountability and elimination or reduction of impunity”¹⁹.

Like national criminal justice systems, also international criminal justice must respect the most important principles and rules governing international criminal proceedings before international and internationalised courts and tribunals, especially the legal guarantee of rights of the accused and victims of crimes²⁰. Here, one should notice that as a rule in the process for pursuing justice an important issue is a global responsibility, namely: “Whatever individual responsibility the law establishes, it must be coupled with yet another kind

¹⁷ E.S. Podgor, R.S. Clark, op.cit., *passim*; Ph. Sands (ed.), *From Nuremberg to the Hague...*, op.cit., *passim*.

¹⁸ See, M.C. Bassiouni, ‘International Crimes *Jus Cogens* and *Obligatio Erga Omnes*’, 59 *Law and Contemporary Problems* (1996) 63; idem, ‘*The Need for International Accountability*’, *International Criminal Law*, Vol. III (3rd edn., 2008), quoted after M. Cherif Bassiouni, *International Criminal Justice in Historical Perspective: The Tension Between State’s Interests and the Pursuit of International Justice*, in: *The Oxford Companion to International Criminal Justice*, Editor in Chief A. Cassese, at p. 131, footnote 1.

¹⁹ M. Cherif Bassiouni, *International Criminal Justice in Historical Perspective: The Tension Between State’s Interests and the Pursuit of International Justice*, in: *The Oxford Companion to International Criminal Justice*, Editor in Chief A. Cassese, at p. 131.

²⁰ See: Article 55 Rights of persons during an investigation

- Article 64 Functions and powers of the Trial Chamber
- Article 67 Rights of the accused
- Article 68 Protection of the victims and witnesses and their participation in the proceedings

of responsibility – that of states and the rest of the international community. But here we mean not state responsibility in the international law sense of liability for the violations themselves, but rather in terms of a duty to achieve justice for victims through accountability of the offenders. This responsibility upon states and other relevant participants follows from moral, political and in many instances, legal considerations”²¹.

6. Bringing Criminals to International Criminal Justice

In bringing criminals to international criminal justice, it is worth referring to such crucial cases as those of Slobodan Milosevic, Augusto Pinochet, Abdoulaye Yerodia Ndombasi, and Saddam Hussein, and also the criminal proceedings before the ICC, for instance the case of *Prosecutor v. Thomas Lubanga Dyilo*. The indictment against Slobodan Milosevic and other figures are of particular interest in several respects. Indeed, it was the first time that a criminal tribunal had formulated and confirmed an indictment for war crimes and crimes against humanity against a current head of State who was still in power. Unfortunately, both Pinochet and Milosevic died in the course of criminal process. Although in these cases the accused have not been sentenced, both the Milosevic indictment before the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the Pinochet case in the UK (then transferred to Chile) have firmly established the rule of law at the international level, in relation to criminal responsibility of the highest political figures for the most serious of international crimes.

6.0.1. Slobodan Milosevic

On 12 February 2002, Milosevic became the first former head of State to be tried before international tribunal for war crimes, crimes against humanity and genocide. One should realize that in the massacre of Srebrenica alone around 7000–8000 Muslims of military age were killed in just seven days. The three cases of Kosovo, Bosnia-Herzegovina and Croatia were then decided in one trial. The Prosecutor aimed to prove that the accused participated in a joint criminal enterprise (JCE)²² in order to establish a Greater Serbia by “cleansing”

²¹ S.R. Ratner, J.S. Abrams, J.L. Bischoff, *op.cit.*, at p. 369.

²² On JCE – joint criminal enterprise, one of the most complex and widely – used doctrines in international criminal law, see: A.M. Danner, *Joint Criminal Enterprise*, in: *International Criminal Law*, Third Edition, Volume Third, Edited by M. Cheriff Bassiouni, M. Nijhoff 2008, p. 483–493.

areas in Croatia, Bosnia-Herzegovina and Kosovo of their non-Serb populations.

The Milosevic indictment has illustrated the strong resolve of the Office of the Prosecutor at the ICTY to focus its strategy on the highest political and military figures. The 5 year trial started with presenting crimes in Kosovo. From the start of the trial, the accused did not accept the Court's legitimacy (on the basis of Security Council Resolution 827, adopted 25.05.1993) and defence counsel, having refused representation by counsel. He denied all material evidence. He did not plead guilty for all crimes pointed out in the indictment. So, he began his opening statement by declaring that the ICTY and his transfer to The Hague were illegal (he was arrested in 2001 by the decision of Regional Court in Belgrade). It was a two day presentation, which contained the elements of his defence and accusations against NATO regarding its bombing campaign in Kosovo and Serbia (1999)²³.

6.0.2. Augusto Pinochet

Augusto Pinochet was arrested on 16 October 1998, while having medical treatment in London, on a warrant issued by a Spanish court. A further Spanish warrant was issued on October 22, adding further charges of murder, hostage taking and torture. Spain requested extradition on the basis of genocide, terrorism and torture committed throughout Pinochet's time in power in Chile. The victims of his regime who suffered from kidnapping, torture, murder, and terrorist acts included political activists, students and citizens of several countries. It is estimated that he allegedly authorised the arrest of 13,000 communists, many of whom were killed or tortured by the police. The regime took control over civilian activities and detained 45,000 people for interrogation due to their political beliefs. Also, the Pinochet regime engaged in massive human rights violations against all who were suspected to be "enemies of the State". In 1990 Pinochet resigned from his state power and allowed for democratic elections. Pinochet was granted a complete amnesty for his past crimes and he was made by Chilean government a Senator for Life.

In November 1998, the Spanish court issued orders confirming its jurisdiction to investigate acts of genocide in Argentina and Chile. It also found uni-

²³ A. Klip, G. Sluiter (eds.), *Annotated Leading Cases of International Criminal Tribunals – The International Criminal Tribunal for the former Yugoslavia 1997–1999*, Volume 3, Intersentia 2001, p. 43. J.B. Banach-Gutierrez, *Prawo do rzetelnego procesu w międzynarodowym prawie karnym: sprawa S. Miloševića (Chorwacja, Bośnia i Hercegowina)*, *Studia Prawne KUL* (2–3), 30–31 2007, p. 7–21.

versal jurisdiction to exist in Spanish law for genocide and terrorism, including torture as part of genocide, and requested extradition from the UK. The UK House of Lords confirmed the legality of the arrest, with a view to extradition on charges of torture of the former Chilean head of State and Senator for Life. Even though, it was held that Pinochet could be extradited, he succeeded in producing medical evidence that he was unfit to stand trial. As a result, he came back to Chile. The Supreme Court of Chile decided to remove Pinochet's immunity and allowed criminal proceedings in his case. Indeed, the criminal process was instituted in Chile, but the accused died in meantime.²⁴ Despite of some obstacles in the trial and the death of Pinochet, it was the first time that a former Head of State has been refused immunity at the national level on the ground that such immunity is not possible regarding international crimes²⁵.

6.0.3. Abdoulaye Yerodia Ndongbasi

The immunity before national courts for international crimes decided by the International Court of Justice in the case *Democratic Republic of the Congo v. Belgium*, 2002 is said to be a very controversial case. On 11 April 2000 a Belgian investigating judge issued an international arrest warrant against the serving Minister of Foreign Affairs of the Democratic Republic of Congo, Abdoulaye Yerodia Ndongbasi. He was foreign minister from March 14, 1999 until late 2000. The international arrest warrant was served *in absentia*. He was accused of making various speeches in August 1998 inciting racial hatred. It was alleged that Yerodia publicly encouraged the Congolese population to kill Tutsi residents in Kinshasa, which resulted in several hundred deaths, lynching, internments, summary executions, and arbitrary arrests and unfair trials. He was charged with crimes under Belgian law concerning the punishment of grave breaches of the Geneva Conventions (1949) and their additional Protocols (1977), and the punishment of serious violation of international humanitarian law. In response, the Democratic Republic of the Congo submitted an application against Belgium to the ICJ, claiming that Belgium did not have

²⁴ N. Bernaz, R. Prouvèze, *International and Domestic Prosecutions*, in : *The Pursuit of International Criminal Justice: A World Study on Conflicts, Victimization, and Post-Conflict Justice*, ed. by M. Cherif Bassiouni, Intersentia 2010, p. 365–368.

²⁵ C. de Than, E. Shorts, *op.cit.*, p. 54–61; J.E. Mendez, *International Human Rights Law, International Humanitarian Law, and International Criminal Law and Procedure: New Relationships*, in: *International Crimes, Peace, and Human Rights: The Role of the International Criminal Court*, *op.cit.*, p. 71–72; Y. Beigbeder, *Judging Criminal Leaders: The Slow Erosion of Impunity*, Kluwer Law International 2002, p. 153–169.

universal jurisdiction in this case, and that Yerodia, as a serving Minister of Foreign Affairs, should enjoy diplomatic immunity. During the course of the proceedings the Congo dropped its jurisdiction arguments and the case was then decided solely on Yerodia's diplomatic immunity as foreign minister. In 2002, the ICJ issued its judgement in the Congo's favour²⁶.

6.0.4. Saddam Hussein

In the case of crimes committed in Iraq, three options were discussed for establishing a tribunal to prosecute crimes committed by the Ba'ath regime during its 25 years of power under Saddam Hussein: an international tribunal established by the Security Council (similar to *ad hoc* international criminals ICTY or ICTR) ; a mixed international and national tribunal (similar to the Special Court for Sierra Leone); and a national Iraqi tribunal with some international support. In fact, it was decided by the newly formed interim Iraqi government and the Bush Administration to establish a purely national Iraqi tribunal – the Iraqi Special Tribunal (IST). Its statute was drafted by the Iraqi Governing Council (IGC) and the Coalition Provisional Authority (CPA). In December 2003 the IST was set up as an official institution. However, in 2005 the IST was replaced by the Iraqi High Criminal Court (IHCC) as the institution charged with trying crimes that occurred under the Ba'ath regime. The first case to be brought before the IST/IHCC involved Saddam Hussein and seven former Baa'th party members charged with crimes against humanity. On 5th of November 2006 the IHCC took its decision in the criminal proceedings against Hussein and his co-defendants, finding them guilty of the charges on which they had been indicted. As a result, Hussein was sentenced to the death penalty, and the execution was carried out on 30 December, 2006.

The setting up of a new Iraqi justice system reflected the problematic relationship between occupation, accountability and justice. The case of President Saddam Hussein is a questionable one under international legal norms, especially human rights law. It seems that the IHCC judgment has been decided against fair trial guarantees. First, imposition of the death penalty is said to be contrary to the present human rights protection, which has provided for the abolition of this form of sentence at the international level. The death penalty is not longer acceptable for a large part of the international community, as being contrary to human dignity and the right to life. Secondly, the accused's right of defence has been violated, as part of an unfair criminal process under

²⁶ Ph.e Sands, *International Law Transformed? From Pinochet to Congo...?* LJIL, 16 (2003), p. 37–53.

the international legal regime. Finally, in principle any kind of force cannot result in *'justice'*, by its nature²⁷.

6.0.5. The Lubanga Case

In its first verdict delivered on 14 March 2012 the International Criminal Court found guilty Thomas Lubanga Dyilo, of the war crimes of enlisting and conscripting of children under the age of 15 years and using them to participate actively in hostilities. He was sentenced, on 10 July 2012, to a total of 14 years of imprisonment.²⁸ The investigation by the Office of the Prosecutor was opened on 23 June 2004, following the referral of the case from the Democratic Republic of the Congo (DRC). Troops under his command were involved in pillaging, torture, rape, and ethnic massacres. Lubanga became the first person arrested under an ICC warrant (2006), while the trial against him started in January 2009. The first ICC judgment is regarded as highly symbolic. First, it fully confirms a doctrine of individual criminal responsibility. Secondly, the charges concerned conscripting, enlisting, and using children in armed conflicts (child soldiers). Here, the ICC referred to the jurisprudence of SCSL (Special Court for Sierra Leone) in finding that the crime of using child soldiers is committed as soon as the child joins the armed group "with or without compulsion"²⁹.

7. Conclusions

In a global perspective, there is a clearly noticeable emergence of a global community or universal human society, which is closely linked with human rights protection. Such an internationalisation of law means that legal norms are not only established at the national level, but also at the international level, having an impact on national law. International criminal justice for the global community is generally characterised by a humanization of law. The international criminal justice system includes such international courts and tribunals as: the International Criminal Court (ICC), the International Criminal Tribunal for

²⁷ M.P. Scharf, G.S. McNeal, *Saddam on Trial, Understanding and Debating the Iraqi High Tribunal*, Carolina Academic Press 2006.

²⁸ Situation in the Democratic Republic of the Congo in the Case of the Prosecutor v. Thomas Lubanga Dyilo, Public Judgment pursuant to Article 74 of the Statute, Trial Chamber I, No.: ICC-01/04-01/06, Date: 14 March 2012.

²⁹ C. Morgan, *Note on Lubanga Guilty Verdict from the ICC*, NJECL, Vol. 3/2012/01, p. 5–7.

the Former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), as well as mixed/internationalised criminal jurisdictions in Sierra Leone, Cambodia, East Timor and Lebanon.

The emerging international criminal justice system has not only considerably enhanced inter-State cooperation in combating the most serious international crimes, but also the development of international criminal procedure. This question especially deals with *fair trial standards*, in the sense of fundamental principles of international criminal proceedings (procedural *jus cogens* norms) which should be observed at the global, regional and national levels. Such norms have attained the status of procedural *jus cogens* norms in contemporary criminal justice systems. This means that these norms or values actually represent overarching fundamentals which are determinative for establishing and further developing international criminal proceedings. However, there still remains a disputable question about the effectiveness of international criminal justice in practice.