



ASSER PRESS

Transitional Justice and a State's Response to Mass Atrocity

Reassessing the Obligations to
Investigate and Prosecute

Jacopo Roberti di Sarsina

Forewords by
William Schabas and
Augusto Antonio Barbera



Springer

Transitional Justice and a State's Response to Mass Atrocity



Roberti di Sarsina J (2018), the author with Mr. Franco Leoni Lautizi, Victim and Survivor of the Nazi Massacre of Marzabotto (September–October 1944), Rimini, 9 February 2018

Jacopo Roberti di Sarsina

Transitional Justice and a State's Response to Mass Atrocity

Reassessing the Obligations to Investigate
and Prosecute



ASSER PRESS



Springer

Jacopo Roberti di Sarsina
School of Law
Alma Mater Studiorum - University of Bologna
Bologna, Italy

ISBN 978-94-6265-275-0 ISBN 978-94-6265-276-7 (eBook)
<https://doi.org/10.1007/978-94-6265-276-7>

Library of Congress Control Number: 2018962759

Published by T.M.C. ASSER PRESS, The Hague, The Netherlands www.asserpress.nl
Produced and distributed for T.M.C. ASSER PRESS by Springer-Verlag Berlin Heidelberg

© T.M.C. ASSER PRESS and the author 2019

No part of this work may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, microfilming, recording or otherwise, without written permission from the Publisher, with the exception of any material supplied specifically for the purpose of being entered and executed on a computer system, for exclusive use by the purchaser of the work. The use of general descriptive names, registered names, trademarks, service marks, etc. in this publication does not imply, even in the absence of a specific statement, that such names are exempt from the relevant protective laws and regulations and therefore free for general use.

This T.M.C. ASSER PRESS imprint is published by the registered company Springer-Verlag GmbH, DE part of Springer Nature
The registered company address is: Heidelberger Platz 3, 14197 Berlin, Germany

To my Mother and to Luise

Foreword by William Schabas

For more than a quarter of a century, “accountability” has been a preoccupation of international law. The concern that perpetrators of mass violence, persecution, and war crimes may go unpunished only emerged in the 1990s. This was marked by the emergence of new institutions, such as the ad hoc tribunals for the former Yugoslavia and Rwanda, and the International Criminal Court, and new legal norms and standards. Arguably, an obligation to try or prosecute those suspected of responsibility in “unimaginable atrocities” has emerged as a rule of customary international law, binding even upon States that have accepted no such treaty obligations.

International law first manifested its interest in accountability following the First World War. The Treaty of Versailles proposed a trial of Kaiser Wilhelm II for what was defined as an “offense against international morality and the sanctity of treaties.” Wilhelm was given sanctuary in the Netherlands, which refused to extradite him for trial, and he lived out his final decades in comfort, in a Dutch castle. Several of the post-War treaties adopted at the Paris Peace Conference provided mechanisms for prosecuting those who had violated the laws and customs of war but only a handful of suspects were actually put on trial. The Treaty of Sèvres took a step further, promising that those responsible for “massacres” within the Ottoman Empire would be judged. But that Treaty never entered into force.

These unsatisfactory results were nevertheless the start of an idea, one that might stall for years at a time but that could never be reversed. For two decades, efforts at accountability were relatively stagnant, but they quickly revived during the Second World War. For several years following the defeat of Germany and Japan, starting with the great trials in Nuremberg and Tokyo, international justice seemed to have regained the momentum that it had first acquired in 1919. This time there were more permanent results, at least in terms of universally applicable treaties intended to apply prospectively. The four Geneva Conventions contemplated criminal justice of those responsible for “grave breaches,” which were particularly serious violations of the laws and customs of war. The labels given to these crimes seemed close to the new discipline of international human rights law. Indeed, the influence was reflected in the emergence of a new term, international humanitarian law, to replace the

somewhat archaic notion of the laws of armed conflict. Perhaps even more important was the adoption by the United Nations General Assembly, in December 1948, of the Convention on the Prevention and Punishment of the Crime of Genocide. It required Contracting States to cooperate in prosecution, through extradition, and it also envisaged the establishment of an International Criminal Court.

But this dynamic period that followed the Second World War soon stalled, just as it had done thirty years earlier after the First World War. For the next four decades, there was little development. Then, quite suddenly, the imperative of accountability emerged once again as a serious concern. Indeed, soon it seemed to dominate discussions of conflict prevention and peacemaking. Very quickly, it became almost unthinkable for wars to end or regimes to collapse without individuals being not only blamed and stigmatized, as had been the fate in the past, but also brought to justice.

The forces that drove these changes in international law are complex and multifaceted. Democratic governance became increasingly widespread, as one tyrannical regime after another seemed to go the way of all flesh. Perhaps, a desire for justice was merely an inevitable accompaniment of such positive political changes. Undoubtedly, the human rights movement played its part. At some point in the 1980s, international human rights law began to address seriously the responsibility of States for so-called horizontal violations. A new understanding emerged whereby States had the responsibility to protect individuals within their jurisdictions from threats to their life, liberty, and security, even when the acts themselves could not be blamed on the State. It was seen as an obligation of means rather than one of the results. When serious violations occurred, States were required to investigate and, where possible, ensure that perpetrators were tried and punished appropriately.

By the 1990s, landmark judgments and decisions describing these principles had been issued by such bodies as the Inter-American Court of Human Rights, the European Court of Human Rights, and the United Nations Human Rights Committee. From modest and rather hesitant beginnings, characterized by an early fear that States would never tolerate robust and dynamic pronouncements from international human rights courts and tribunals, the institutions began to innovate. The treaties might be silent about such matters as the authority to issue provisional measures, or extraterritorial effects, or obligations to prosecute. That did not discourage the judicial creativity of these innovative institutions. The spirit proved infectious. The growth of international criminal justice was one of the very desirable results.

It is to the legal consequences of these developments that Jacopo Roberti di Sarsina turns his attention in this remarkable study. He asks whether international law, as it now stands, constitutes a building block or a stumbling block when States respond to legacies of mass atrocity. This involves an assessment of the obligations imposed upon States to investigate or prosecute international atrocity crimes. Dr. Roberti di Sarsina is intrigued by the obligation, which is clearly expressed in several international treaties, both old and new. His inquiry addresses the customary nature of the obligation. His conclusion may not be popular in all circles, perhaps because international law discourse is sometimes imbued with an element of wishful

thinking. But the examination is rigorous and the argument well-formulated. It represents an important contribution to an ongoing debate.

Several shibboleths are confronted by the author in this book. One of the more popular claims to circulate in recent years is the suggestion that amnesty at the end of conflicts is now prohibited by international law. Dr. Roberti di Sarsina challenges such an extravagant contention. It is one that seems to find constant confirmation in the echo chamber of academic commentary and the writings of activists yet precious little endorsement in the practice of States. The latter continue to regard amnesty as a useful component of the toolbox of peacemaking, showing little regard for those who contend this is not allowed. Even the United Nations Secretariat purports to hold the position that peace agreements with amnesty clauses are impermissible. And yet time and again, it welcomes decisions by combatants to lay down their arms and stop the bloodshed, as it should, and despite the fact that there has been an agreement not to punish perpetrators of war crimes.

The proponents of the anti-amnesty thesis are reduced to claims of a rule that is “crystallizing” rather than one that has crystallized. But often, those with the nuanced approach of Jacopo Roberti di Sarsina—one that is highly commendable—find themselves trying to formulate another rule. They feel it is necessary to identify situations when amnesty is prohibited. The tired mantra about the exclusion of amnesty received a serious blow in the 2017 submission to the International Law Commission by the rapporteur on the draft articles on crimes against humanity, Sean Murphy. Now the president of the prestigious American Society of International Law, Prof. Murphy pointed to a genuine debate among international lawyers about the approach to be taken to amnesty. He discussed at length what are known as the Belfast Principles. These represent a serious attempt to attempt to frame and regulate the practice of amnesty rather than to deny it outright.

Besides being informative and comprehensive, this book is a “reality check.” It constitutes a sober and realistic assessment of issues about which there is often significant exaggeration. For that reason alone, it deserves our attention.

London, UK
September 2018

William Schabas

Foreword by Augusto Antonio Barbera

The current trend of international law is to broaden as much as possible the protection of human rights and, by the same token, to make those responsible for heinous breaches of such rights criminally accountable. We have seen the growing weight of international human rights instruments and the birth of international tribunals, notably and most recently the International Criminal Court. These last reflect a change of heart by the international community as a whole.

As is known, the first foundations of this process lie in the manifesto of the four liberties (freedom of speech, freedom of worship, freedom from want, freedom from fear) proclaimed by Franklin D. Roosevelt in 1941, and in the USA's determination after the Second World War to override the formalism of continental law and impose statutes establishing what history would come to know as the Nuremberg Tribunal and the Tokyo Tribunal. By contrast, the end of the First World War had seen an unfortunate attempt to arraign the German Kaiser Wilhelm II "for a supreme offense against international morality and the sanctity of treaties."

Once the door was open, there followed (to cite the most important) the Convention on the Prevention and Punishment of the Crime of Genocide and the Universal Declaration of Human Rights, both in 1948; the 1949 Geneva Conventions; the European Convention on Human Rights in 1950; the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights, both in 1966; the 1969 American Convention on Human Rights; the African Charter on Human and Peoples' Rights in 1981; the Convention against Torture in 1984; the signing of the International Criminal Court Statute at Rome on the memorable night of July 17, 1998; the Arab Charter on Human Rights in 2004; and the International Convention for the Protection of All Persons from Enforced Disappearance in 2006.

The trend has brought a welcome change in the basis of international law. Firstly, it outmodes the traditional view of the latter as a law regulating relations among States and increasingly focuses on individuals and peoples as a subject of international law. Secondly, it challenges the principle of nonintervention in the internal affairs of another State. Thirdly—and this is the topic of the present

splendid volume—it queries the conduct and limits even of peace processes within individual States.

All too often purely political reasons and the desire to patch up an ostensible national reconciliation have ended by perpetuating systematic impunity at the expense of any punishing of the guilty, establishing of the truth or adoption of reparation policies on behalf of the victims. Impunity for wholesale violation of human rights was long considered the lesser evil, or the price to be paid for ensuring an end to armed conflict and a peaceful transition toward democracy.

Gradually, however, the international community has come to realize that impunity forms an insuperable obstacle to the establishment of the rule of law and full enjoyment of basic rights and freedoms. International law and international criminal justice have therefore made States assume ever-clearer obligations to criminalize certain conduct, and prosecute and punish appropriately the authors of dire crimes. Due in particular to regional courts and UN committees on human rights, amnesty and other acts of clemency have been ruled incompatible with international law. But State practice often goes in the opposite direction, as recently emerged in Colombia, where the vexed November 2016 peace agreement with FARC-EP still resorted to measures of clemency to put an end to decades of devastating internal conflict and facilitate transition.

Within this debate, the present monograph addresses in a clear and rigorous manner the complex and practical question of the role of international law in the face of massive atrocities perpetrated in the past and the daunting dilemmas of countries undergoing transition when it comes to striking the proper balance between achieving peace and searching for justice.

In light of the Truth and Dignity Commission established in Tunisia in December 2013 after the demise of the Ben Ali regime, the peace agreement in Colombia and the processes that may be expected in other countries like Syria, Libya, the Democratic Republic of the Congo, the Central African Republic, Yemen and Myanmar—all torn apart by internecine conflicts and grave violation of human rights calling for a reckoning with their past after some sort of peace agreement and democratic transition—this book makes a most timely appearance and a constructive contribution to the debate, casting light on the current status of customary international law.

Following a classic international law methodology, this book specifically examines the contention that there is an absolute obligation upon States, and allegedly a customary obligation, to prosecute or extradite in case of gross humanitarian and human rights violations often committed by State agents or with their complicity, and in light of this weighs the compatibility of amnesties, pardons, and similar arrangements to facilitate transition with the applicable international legal framework.

To this end, in the first parts of his study the author looks into the *aut dedere aut judicare* clauses enshrined in the 1949 Geneva Conventions and in three principal human rights treaties, before examining the procedural obligations derived from general human rights treaties; he moves on to examine the realpolitik considerations and practical difficulties faced by countries in transition in investigating and

prosecuting thousands of culprits responsible for “extraordinary” crimes—which have too often led them to pass amnesty laws as bargaining chips in negotiating the peaceful exit of dictators, along with the relationship between international law and transitional justice, and the role played by the International Criminal Court; he then goes on to examine instruments under international law that States may utilize amid a transition in order not to engage their international responsibility.

In the last three decades, the global fight against impunity has gained momentum with (international) criminal prosecution at the forefront of this campaign but the international community has increasingly become aware of the fact that ending the culture of impunity and bringing about the rule of law is no easy task and can not be limited to a retributive notion of justice. For this reason, there is a need for transitional justice that embraces a restorative and reparative understanding of justice, resting on a pluralistic notion of accountability and on institutional restructuring, after scenarios of mass atrocities with which ordinary justice would be incapable of coping. As Pope Francis said during his visit to Colombia—a country which has made great strides toward ending violence and seeking reconciliation—“The more demanding the path that leads to peace and understanding, the greater must be our efforts to acknowledge each another, to heal wounds, to build bridges, to strengthen relationships and support one another.”¹

Dr. Roberti di Sarsina’s study draws attention to the importance of a multidisciplinary approach to these issues and endorses *bona fide* national reconciliation programs with community-rooted alternatives in which criminal prosecution is only one of the various measures employed as part of an integrated approach to peacemaking. I am sure it will help the scholars and experts in the field to reach greater understanding of the role of international law, the nature of the obligations to investigate and prosecute serious international humanitarian and human rights law violations, and to appreciate the value of transitional justice—an unavoidable component of the complex backward- and forward-looking process of confronting a past of human rights abuse and building a brighter future grounded in the pursuit of the common good and respect for the inviolable dignity of the human person.

Rome, Italy
September 2018

Judge Augusto Antonio Barbera
Constitutional Court of Italy

¹ Address of His Holiness Pope Francis, 7 September 2017, Apostolic Journey of His Holiness Pope Francis to Colombia, 6–11 September 2017, Meeting with Authorities, the Diplomatic Corps and Representative of the Civil Society, https://w2.vatican.va/content/francesco/en/speeches/2017/september/documents/papa-francesco_20170907_viaggioapostolico-colombia-autorita.html [Accessed 18 September 2018].

Acknowledgements

This book, which is based on my Ph.D. thesis, would not have been possible without the invaluable support of and inputs from many colleagues I met in the course of my Ph.D. program at the School of International Studies, University of Trento, especially during my research stays at foreign institutions.

My thanks, first, to Prof. Paul van Zyl who, before anyone else, kindled my interest in the subject of transitional justice during my LLM at NYU Law School. Following the chronology of my stays, I would then like to thank Prof. Javier Chinchón Álvarez, whose work has proved inspirational, and Prof. Ana Gemma López Martín of the Complutense University of Madrid; Prof. André Nollkaemper, Prof. Hege Elizabeth Kjos, and Prof. Harmen van der Wilt of the University of Amsterdam; Prof. Georg Nolte of Humboldt University Berlin; also Prof. Iryna Marchuk and Prof. Achilles Skordas of the University of Copenhagen. All of them offered advice and guidance, provided me with their thoughtful and incisive comments, came up with structural suggestions, called my attention to essential references, and proved always available for discussion. Prof. Nollkaemper, Prof. Skordas, and Prof. Marchuk also kindly reviewed some chapters in the process of drafting. I am also grateful to Dr. Elena Maculan of UNED and Dr. Nicola Palmer of King's College for their advice.

I am especially grateful to Prof. Giuseppe Nesi, my former Ph.D. supervisor, who always supported and encouraged my research, and to Prof. William Schabas of Middlesex University London and Prof. Marko Milanovic of Nottingham University, my Ph.D. external examiners, who provided very useful and detailed comments.

My appreciation goes to the School of International Studies and to Prof. Jens Woelk and Prof. Stefano Schiavo, its former coordinators. I would also like to thank all the administrative staff of the School and of the University of Trento who made my research much easier.

Mr. Ralph Nisbet, and Mr. Mark Beittel from the School, proved invaluable in improving the clarity and fluidity of my book.

I would also like to thank Asser Press, especially Mr. Frank Bakker and Ms. Kiki van Gorp, and Springer for their interest in my research and for publishing my study.

Last but not least, I would like to thank my family for supporting and letting me fulfill my ambitions.

I have co-dedicated this book to my mother, Patrizia, passionate and optimistic as always, who encouraged and counseled me, and to my girlfriend, Luise, who has always been inspirational and supportive.

I am deeply grateful to all.

Bologna, Italy
September 2018

Jacopo Roberti di Sarsina

Contents

1	Introduction	1
	References	11
2	The Content of the Obligations to Investigate and Prosecute International Humanitarian Law Violations—The 1949 Geneva Conventions and the Additional Protocols	13
2.1	The “Respect and Ensure Respect” Provision	16
2.1.1	The Purpose of Common Article 1	16
2.1.2	A Dynamic Interpretation? Between Internal and External Compliance Dimensions	19
2.1.3	The <i>Travaux Préparatoires</i>	21
2.1.4	The ICRC Commentaries	22
2.1.5	The Interpretation of the “Respect” Provision in Light of Other International Treaties	24
2.1.6	The Interpretation of the “Ensure Respect” Provision in Light of Other International Treaties and State Practice	25
2.1.7	The Interpretation of the “In All Circumstances” Term	29
2.2	The Obligations to Investigate and Prosecute	30
2.2.1	The Obligation to Criminalize	32
2.2.2	The Obligation to Search	32
2.2.3	The Obligation to Bring Those Responsible Before Domestic Courts	35
2.2.4	The Question of Amnesty	36
2.2.5	The Obligation to Extradite	38
2.2.6	The Obligation to “Suppress” “Other” Serious Violations	41

- 2.2.7 Other Residuary Mechanisms to Ensure Compliance 42
- 2.2.8 The Nature of the Obligations to Investigate and Prosecute 42
- References 44
- 3 The Content of the Obligations to Investigate and Prosecute International Human Rights Law Violations 49**
 - 3.1 Crimes Defined in International Human Rights Conventions as Explicitly Requiring Investigation and Prosecution 50
 - 3.1.1 The Genocide Convention 51
 - 3.1.2 The Torture Convention 53
 - 3.1.3 The Enforced Disappearance Convention 58
 - 3.1.4 Comparative Analysis 60
 - 3.2 Investigating and Prosecuting Under Comprehensive Universal and Regional Human Rights Conventions 61
 - 3.2.1 Investigating and Prosecuting Under the International Covenant on Civil and Political Rights 62
 - 3.2.2 Investigating and Prosecuting Under the European Convention on Human Rights 71
 - 3.2.3 Investigating and Prosecuting Under the American Convention on Human Rights 81
 - 3.2.4 Investigating and Prosecuting Under Customary International Law—Crimes Against Humanity 90
 - References 96
- 4 International Law and Transitional Justice: The Difficulties of Abiding by the Obligations to Investigate and Prosecute in Countries Facing a Transition 101**
 - 4.1 Defining Transition and Transitional Justice 102
 - 4.2 The Dilemmas and Challenges Faced by Successor Governments When Dealing with a Legacy of Massive Atrocities: The Inherent Risks of Confronting an Undefeated and Still Powerful Military 111
 - 4.3 Common Measures to Counter These Dilemmas Short of Prosecution: Amnesty and Pardon 119
 - 4.4 Amnesty, Pardon, International Law, and the Fight Against Impunity 127
 - 4.4.1 The Recent Jurisprudence of International Treaty Bodies on Amnesty 132
 - 4.4.2 Amnesty and Customary International Law: An Emerging Norm Against Amnesty for International Crimes? 143
 - 4.5 Amnesty, Peace Agreements, and the International Criminal Court 146

- 4.5.1 The International Criminal Court Stance in Uganda: No Deference to National Measures of Reconciliation 153
- 4.5.2 The International Criminal Court and the 2016 Colombian Final Peace Agreement: At Long Last a Case for Positive Complementarity? 155
- 4.6 The Applicability of International Law to Transitions 161
- References 164
- 5 State’s International Responsibility for Failing to Investigate and Prosecute Mass Atrocities: Are There Techniques Within International Law to Solve the Dilemmas Raised by Transitions?** 173
 - 5.1 Denunciation, Suspension, and Limitation Clauses in International Humanitarian and Human Rights Treaties 177
 - 5.1.1 Denunciation of the 1949 Geneva Conventions and of the Additional Protocols 178
 - 5.1.2 Suspension of Rights and Guarantees Under Exceptional Circumstances in Universal and Regional Human Rights Treaties 181
 - 5.2 Article 23 on Force Majeure of the 2001 ILC Draft Articles on Responsibility of States for Internationally Wrongful Acts 197
 - 5.2.1 Analysis of the Provision 197
 - 5.2.2 State Practice 204
 - 5.2.3 Resorting to *Force Majeure* in Transitions 208
 - 5.3 Article 25 on Necessity of the 2001 ILC Draft Articles on Responsibility of States for Internationally Wrongful Acts 211
 - 5.3.1 Analysis of the Provision 211
 - 5.3.2 State Practice 219
 - 5.3.3 Resorting to Necessity in Transitions 222
 - References 227
- 6 Conclusions** 231
- References 239
- Index** 241

About the Author

Dr. Jacopo Roberti di Sarsina is an International Law Expert at the Alma Mater Studiorum - University of Bologna School of Law and a dual-qualified lawyer (Italy and New York). He completed a PhD in public international law, label Doctor Europaeus, at the School of International Studies, University of Trento, holds an LLM from NYU School of Law, and read law at the University of Bologna.

Abbreviations

ACHR	American Convention on Human Rights
AP I-III	Additional Protocol I-III
CITCNR	Commission for the Identification of the Truth, Coexistence and Non-Repetition
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
ECommHR	European Commission on Human Rights
ECtHR	European Court of Human Rights
FARC-EP	<i>Fuerzas Armadas Revolucionarias de Colombia-Ejército del Pueblo</i>
GC I-IV	Geneva Convention I-IV
HRC	Human Rights Committee
IACHR	Inter-American Commission on Human Rights
IACtHR	Inter-American Court of Human Rights
ICC	International Criminal Court
ICC Statute	Statute of the International Criminal Court or Rome Statute
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
ICSID	International Centre for Settlement of Investment Disputes
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
ILC	International Law Commission
LRA	Lord's Resistance Army
OAS	Organization of American States
PCA	Permanent Court of Arbitration
PCIJ	Permanent Court of International Justice
SCSL	Special Court for Sierra Leone
TRC	Truth and Reconciliation Commission

UN	United Nations
UNGA	United Nations General Assembly
UNSC	United Nations Security Council
VLCT	Vienna Convention on the Law of Treaties

List of Figures

Fig. 4.1	Typical forms of transition [<i>Source</i> Boraine 2000, p. 384]	111
----------	---	-----

List of Cases

Decisions of International Courts and Tribunals

Permanent Court of International Justice

- *Case concerning the Payment in Gold of Brazilian Federal Loans Contracted in France (France v. Brazil)*, Judgment No. 15, 1929, P.C.I.J. Series A, No. 21
- *Case concerning various Serbian Loans Contracted in France (France v. Serbia)*, Judgment No. 14, 1929, P.C.I.J. Series A, No. 20
- *Lighthouses Case between France and Greece (France v. Greece)*, Judgment, 1934, P.C.I.J. Series A/B, No. 62
- *Société Commerciale de Belgique*, Judgment, 1939, P.C.I.J. Series A/B, No. 78

International Court of Justice

- *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment, [2015] ICJ Rep 3
- *Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Provisional Measures, Order of 1 July 2000, [2000] ICJ Rep 111
- *Case Concerning Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda)*, Jurisdiction and Admissibility, Judgment, [2006] ICJ Rep 6
- *Case Concerning East Timor (Portugal v. Australia)*, Judgment, [1995] ICJ Rep 90
- *Case Concerning Rights of Nationals of the United States of America in Morocco (France v. United States of America)*, Judgment, [1952] ICJ Rep 176
- *Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, [2007] ICJ Rep 43
- *Case Concerning the Arrest Warrant of April 11, 2000 (Democratic Republic of Congo v. Belgium)*, Dissenting Opinion of Judge van den Wyngaert, [2002] ICJ Rep 3

- *Case Concerning the Arrest Warrant of April 11, 2000 (Democratic Republic of Congo v. Belgium)*, Separate Opinion of Judge Guillaume, [2002] ICJ Rep 3
- *Case Concerning the Barcelona Traction, Light and Power Co. Ltd. (Belgium v. Spain)*, Judgment, [1970] ICJ Rep 3
- *Case Concerning the Territorial Dispute (Libyan Arab Jamahiriya v. Chad)*, Judgment, [1994] ICJ Rep 6
- *Fisheries Jurisdiction (Spain v. Canada)*, Jurisdiction of the Court, Judgment, [1998] ICJ Rep 432
- *Gabcikovo-Nagymaros Project (Hungary v. Slovakia)*, Judgment, [1997] ICJ Rep 7
- *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa)*, Advisory Opinion, [1971] ICJ Rep 16
- *Legal Consequences of the Construction of a Wall in The Occupied Palestinian Territory*, Advisory Opinion, [2004] ICJ Rep 136
- *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, [1996] ICJ Rep 226
- *Legality of the Threat or Use of Nuclear Weapons*, Dissenting Opinion of Judge Weeramantry, [1996] ICJ Rep 226
- *Military and Paramilitary Activities in and against Nicaragua Case (Nicaragua v. USA)*, Merits, Judgment, [1986] ICJ Rep 14
- *North Sea Continental Shelf (Germany v. Denmark)*, Judgment (Merits), [1969] ICJ Rep 3
- *Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment, [2012] ICJ Rep 422
- *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, Advisory Opinion, [1951] ICJ Rep 15

International Criminal Court

- *Prosecutor v. Jean-Pierre Bemba Gombo*, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on Charges if the Prosecutor Against Jean-Pierre Bemba Gombo, 15 June 2009, ICC-01/05-01/08-424
- *Situation in the Republic of Kenya*, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic on Kenya (Pre-Trial Chamber II), 31 March 2010, ICC-01/09-19

International Criminal Tribunal for the former Yugoslavia

- *Prosecutor v. Furundzija*, Judgment (Trial Chamber II), 10 December 1998, Case No. IT-95-17/1-T
- *Prosecutor v. Jadranko Prlić et al.*, Judgment (Appeals Chamber), 29 November 2017, Case IT-04-74-A
- *Prosecutor v. Kupreskic*, Judgment, 14 January 2000, Case No. IT-95-16-T
- *Prosecutor v. Ljube Boskoski and Johan Tarculovski*, Judgment (Trial Chamber), 10 July 2008, Case IT-04-83-T

- *Prosecutor v. Martić*, Decision on Review of the Indictment, 8 March 1996, Case No. IT-95-11
- *Prosecutor v. Raško Mladić*, Judgment (Trial Chamber I), 22 November 2017, Case No. IT-09-92-T
- *Prosecutor v. Tadić*, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction (Appeals Chamber), 2 October 1995, Case No. IT-94-1-I

International Criminal Tribunal for Rwanda

- *Prosecutor v. Jean-Paul Akayesu*, Judgment (Trial Chamber), 2 September 1998, Case No. ICTR-96-4-T

Special Court for Sierra Leone

- *The Prosecutor v. Charles Ghankay Taylor*, Sentencing Judgment (Trial Chamber II), 30 May 2012, Case No. SCSL-03-01-T-1285
- *The Prosecutor v. Charles Ghankay Taylor*, Appeal Judgment (Appeals Chamber), 26 September 2013, Case No. SCSL-03-01-A-1389
- *The Prosecutor v. Morris Kallon and Brima Bazzy Kamara*, Decision on Challenge to Jurisdiction: Lomé Accord Amnesty (Appeals Chamber), 13 March 2004, Cases No. SCSL-2004-15-AR72 and No. SCSL-2004-16-AR72

European Court of Justice

- *A. Racke GmbH & Co. v. Hauptzollamt Mainz*, Judgment, 16 June 1998, Case C-162/96
- *Commission of the European Communities v. Italian Republic*, 1985, Case 101/84, Reports 1985-6
- *Denkavit v. Belgium*, Judgment, 5 February 1987, Case 145/85, Reports 1987-2

International Tribunal for the Law of the Sea

- *M/V 'SAIGA' (No 2) (Saint Vincent and the Grenadines v. Guinea)*, Judgment (Merits), 1 July 1999, ITLOS Case No 2, 1999 ITLOS Reports 10

Decisions of Human Rights Treaty Bodies

European Commission on Human Rights

- *Cyprus v. Turkey*, Commission Report, 10 July 1976, App. Nos. 6780/74 and 6950/75
- *Denmark, Norway, Sweden, and the Netherlands v. Greece*, Commission Report, 5 November 1969, App. Nos. 3321/67, 3322/67, 3323/67, and 3344/67, (1969) 12 YB 'The Greek Case' 1

- *Donnelly et al. v. United Kingdom*, Decision on Admissibility, 1975, 1976 Yearbook of the European Convention on Human Rights
- *Dujardin v. France*, Decision of Admissibility, 2 September 1991, App. No. 16734/90, 72 European Commission on Human Rights Decisions and Reports 236
- *X. v. Federal Republic of Germany*, 1967, 24 Collection of Decisions 50

European Court of Human Rights

- *A. and Others v. the United Kingdom*, Judgment (Grand Chamber), 19 February 2009, App. No. 3455/05
- *Abdülsamet Yaman v. Turkey*, Judgment, 2 November 2004, Application No. 32446/96
- *Aksoy v. Turkey*, Judgment, 18 December 1996, Application No. 21987/93, Reports 1996-VI
- *Assenov and Others v. Bulgaria*, Judgment, 28 October 1998, Application No. 24760/94, Reports 1998-VIII
- *Association “21 Decembre 1989” and Others v. Romania*, Judgment, 25 May 2011, Application Nos. 33810/07 and 18817/08
- *Azzolina and Others v. Italy*, Judgment, 26 October 2017, Application Nos. 28923/09 and 67599/10
- *Baysayeva v. Russia*, Judgment, 5 April 2007, Application No. 74237/01
- *Blair and Others v. Italy*, Judgment, 26 October 2017, Application Nos. 1442/14, 21319/14, and 21911/14
- *Brannigan and McBride v. the United Kingdom*, Judgment, 25 May 1993, App. Nos. 14553/89 and 14554/89, Series A No. 258-B
- *Calvelli and Ciglio v. Italy*, Judgment, 17 January 2002, Application No. 32967/96
- *Cyprus v. Turkey*, Judgment, 10 May 2001, Application No. 25781/94
- *Demir and Others v. Turkey*, Judgment, 23 September 1998, App. Nos. 21380/93, 21381/93, and 21383/93, Reports 1998-VI
- *El Masri v. The former Yugoslav Republic of Macedonia*, Judgment (Grand Chamber), 13 December 2012, Application No. 39630/09
- *Eski v. Turkey*, Judgment, 5 June 2012, Application No. 8354/04
- *Finucane v. United Kingdom*, Judgment, 1 July 2003, Application No. 29178/95, Reports 2003-VIII
- *G v. Germany*, Judgment, 7 June 2012, Application No. 65210/09
- *Gul v. Turkey*, Judgment, 14 December 1990, Application No. 22676/93
- *Ireland v. the United Kingdom*, Judgment, 18 January 1978, App. 5310/71, Series A No. 25
- *Isayeva v. Russia*, Judgment, 24 February 2005, Application No. 57950/00
- *Isayeva, Yusopova and Bazayeva v. Russia*, Judgment, 24 February 2005, Application Nos. 57947-9/00
- *Jendrowiak v. Germany*, Judgment, 14 April 2011, Application No. 30060/04
- *K v. Germany*, Judgment, 7 June 2012, Application No. 61827/09

- *Kaya v. Turkey*, Judgment, 19 February 1998, Application Nos. 158/1996/777/978, Reports 1998-I
- *Khatsiyeva and Others v. Russia*, Judgment, 17 January 2008, Application No. 5108/02
- *Kılıç v. Turkey*, Judgment, 28 March 2000, Application No. 22492/93, Reports 2000-III
- *Kurt v. Turkey*, Judgment, 25 May 1998, Application No. 24276/94
- *Kuznetsov v. Ukraine*, Judgment, 29 April 2003, Application No. 39042/97
- *Labita v. Italy*, Judgment (Grand Chamber), 6 April 2000, App. No. 26772/95, Reports 2000-IV
- *Lawless v. Ireland*, Judgment, 1 July 1961, App. No. 332/57, Series A No. 3
- *Mahmut Kaya v. Turkey*, Judgment, 28 March 2000, Application No. 22535/93, Reports 2000-III
- *Margus v. Croatia*, Judgment, 13 November 2012, Application No. 4455/10
- *Margus v. Croatia*, Judgment (Grand Chamber), 27 May 2014, Application No. 4455/10
- *McCann and Others v. United Kingdom*, Judgment, 27 September 1995, Application No. 18984/91
- *Nachova et al. v. Bulgaria*, Judgment (Grand Chamber), 6 July 2005, Application Nos. 43577/98 and 43579/98, Reports 2005-VII
- *Nasr et Ghali c. Italie*, Judgment, 23 February 2016, Application No. 44883/09
- *Nikolova and Velichkova v. Bulgaria*, Judgment, 20 December 2007, Application No. 7888/03
- *O.H. v. Germany*, Judgment, 24 November 2011, App. No. 4646/08
- *Öneryıldız v. Turkey*, Judgment (Grand Chamber), 30 November 2004, Application No. 48939/99
- *Osman v. United Kingdom*, Judgment, 28 October 1998, Case No 87/1997/871/1083, Reports 1998-VII
- *Ould Dah v. France*, Admissibility Decision, 17 March 2009, Application No. 13113/03
- *Ramirez Sanchez v. France*, Judgment (Grand Chamber), 4 July 2006, App. No. 59450/00, Reports 2006-IX
- *Ramsahai and Others v. The Netherlands*, Judgment (Grand Chamber), 15 May 2007, Application No. 52391/99
- *Selmouni v. France*, Judgment (Grand Chamber), 28 July 1999, App. No. 25803/94, Reports 1999-V
- *Šilih v. Slovenia*, Judgment (Grand Chamber), 9 April 2009, Application No. 71463/01
- *Tarbuk v. Croatia*, Judgment, 11 December 2012, Application No. 31360/10
- *X and Y v. The Netherlands*, Judgment, 27 February 1985, Application No. 16/1983/72/110, 91 Eur. Ct. H.R. (ser. A)
- *Yasa v. Turkey*, Judgment, 2 September 1998, Application No. 22495/96, Reports 1998-VI
- *Yeter v. Turkey*, Judgment, 13 January 2009, Application No. 33750/03

Inter-American Commission on Human Rights

- *Arges Sequeira Mangas v. Nicaragua*, Report No. 52/97, 18 February 1998, Case 11.218, OEA/Ser.L/V/II.98 doc. 6 rev.
- *Carmelo Soria Espinoza v. Chile*, Report No. 133/99, 19 November 1999, Case 11.725, OEA/Ser.L/V/II.106, doc. 3 rev. at 494
- *Garay Hermosilla et al. v. Chile*, Report No. 36/96, 15 October 1996, Case 10.843, OEA/Ser.L/V/II.95 doc. 7 rev. at 156
- *Ignacio Ellacuría et al. v. El Salvador*, Report No. 136/99, 22 December 1999, Case 10.488, OEA/Ser.L/V/II.106 doc. 3 rev.
- *Lucio Parada Cea et al. v. El Salvador*, Report No.1/99, 27 January 1999, Case 10.480, OEA/Ser.L/V/II.95 doc. 7 rev.
- *Masacre Las Hojas v. El Salvador*, Report No. 26/92, 24 September 1992, Case 10.287, OEA/Ser.L/V/II.83 doc. 14 at 83
- *Mendoza et al. v. Uruguay*, Report No. 29/92, 2 October 1992, Cases 10.029, 10.036, 10.145, 10.305, 10.372, 10.373, 10.374, and 10.375, OEA/Ser.L/V/II.83, doc. 14 at 154
- *Meneses Reyes, Lagos Salinas, Alsina Hurtos and Vegara Inostroza v. Chile*, Report No. 34/96, 15 October 1996, Case 11.228, 11.229, 11.231 and 11.182, OEA/Ser.L/V/II.95 Doc. 7 rev. at 196
- *Monseñor Oscar Arnulfo Romero and Galdámez v. El Salvador*, Report No. 37/00, 13 April 2000, Case 11.481, OEA/Ser.L/V/II.106 doc. 3 rev.
- *Walter Humberto Vasquez Vejarano v. Peru*, Report No. 48/00, 1999, Case 11.166, OEA/Ser.L/V/II.106 Doc. 3 rev. at 1200

Inter-American Court of Human Rights

- *19 Merchants v. Colombia Case*, Judgment (Merits, Reparations and Costs), 5 July 2004, (ser. C) No. 109
- *Almonacid Arellano v. Chile*, Judgment (Preliminary Objections, Merits, Reparations, and Costs), Concurring Opinion of Judge Antonio Cançado Trindade, 26 September 2006, (ser. C) No.154
- *Bámaca Velásquez v. Guatemala Case*, Judgment (Merits), 25 November 2000, (ser. C) No. 70
- *Barrios Altos v. Peru Case (Chumbipuma Aguirre et al. v. Peru)*, Judgment (Merits), 14 March 2001, (ser. C) No. 75
- *Castillo Páez v. Peru Case*, Judgment (Merits), 3 November 1997, (ser. C) No. 34
- *Castillo-Páez v. Peru*, Judgment (Reparations and Costs), 27 November 1998, (ser. C) No. 43
- *Coc Max et al. (Massacre of Xamán) v. Guatemala*, Judgment (Merits, Reparations and Costs), 22 August 2018, (ser. C) No. 356
- *Durand and Ugarte Case*, Judgment (Merits), 16 August 2000, (ser. C) No. 68
- *Gelman v. Uruguay*, Judgment (Merits and Reparations), 24 February 2011, (ser. C) No. 221

- *Godínez-Cruz v. Honduras Case*, Judgment (Merits), 20 January 1989, (ser. C) No. 5
- *Goiburú et al. v. Paraguay*, Judgment (Merits, Reparations and Costs), 22 September 2006, (ser. C) No. 153
- *Gomes Lund et al. (“Guerrilha do Araguaia”) v. Brazil*, Judgment (Preliminary Objections, Merits, Reparations and Costs), 24 November 2010, (ser. C) No. 219
- *Gutiérrez-Soler v. Colombia*, Judgment (Merits, Reparations, Costs), 12 September 2005, (ser. C) No. 132
- *Habeas Corpus in Emergency Situations (Arts. 27(2) and 7(6) of the American Convention on Human Rights)*, Advisory Opinion OC-8/87, 30 January 1987, (Ser. A) No. 8
- *Juan Humberto Sánchez v. Honduras Case*, Judgment (Preliminary Objections, Merits, Reparations and Costs), 7 June 2003, (ser. C) No. 99
- *Judicial Guarantees in States of Emergency (Arts. 27(2), 25 and 8 of the ACHR)*, Advisory Opinion OC-9/87, 6 October 1987, (Ser. A) No. 9
- *La Cantuta v. Peru Case*, Judgment (Merits, Reparations and Costs), 29 November 2006, (ser. C) No. 162
- *Las Palmeras v. Colombia Case*, Judgment (Merits), 6 December 2001, (ser. C) No. 90
- *Las Palmeras v. Colombia Case*, Judgment (Reparations and Costs), 26 November 2002, (ser. C) No. 96
- *López Lone et al. v. Honduras Case*, Judgment (Preliminary Objection, Merits, Reparations and Costs), 5 October 2015, (ser. C) No. 302
- *Miguel Castro Castro Prison v. Peru*, Judgment (Merits, Reparations and Costs), 25 November 2006, (ser. C) No. 160
- *Myrna Mack Chang v. Guatemala Case*, Judgment (Merits, Reparations and Costs), 25 November 2003, (ser. C) No. 101
- *Reverón Trujillo v. Venezuela Case*, Judgment (Preliminary Objections, Merits, Reparations and Costs), 30 June 2009, (ser. C) No. 197
- *San Miguel Sosa et al. v. Venezuela*, Judgment (Merits, Reparations and Costs), 8 February 2018, (ser. C) No. 348
- *Sawhoyamaya Indigenous Community v. Paraguay Case*, Judgment (Merits, Reparations and Costs), 29 March 2006, (ser. C) No. 146
- *“Street Children” (Villagrán Morales et al.) v. Guatemala Case*, Judgment (Reparations and Costs), 26 May 2001, (ser. C) No. 77
- *Suárez-Rosero v. Ecuador Case*, Judgment (Merits), 12 November 1997, (ser. C) No. 35
- *The Massacres of El Mozote and Nearby Places v. El Salvador Case*, Judgment (Merits, Reparations and Costs), 25 October 2012, (ser. C) No. 252
- *The Rochela Massacre v. Colombia Case*, Judgment (Merits, Reparations, and Costs), 11 May 2007, (ser. C) No. 163
- *Velásquez Rodríguez Case*, Judgment, 29 July 1988, (ser. C) No. 4
- *Velásquez Rodríguez Case*, Judgment (Compensation), 21 July 1989, (ser. C) No. 7

- *Vera Vera v. Ecuador Case*, Judgment (Preliminary Objections, Merits, Reparations and Costs), 19 May 2011, (ser. C) No. 226
- “*White Van*” (*Paniagua Morales et al.*) *v. Guatemala Case*, Judgment (Merits), 8 March 1998, (ser. C) No. 37

UN Committee against Torture

- *Dimitrijevic v. Serbia and Montenegro*, 16 November 2005, Communication No. 172/2000, U.N. Doc. CAT/C/35/D/172/2000
- *Dragan Dimitrijevic v. Serbia and Montenegro*, 2004, Communication No. 207/2002, U.N. Doc. CAT/C/33/D/207/2002
- *Halimi-Nedzibi v. Austria*, 18 November 1993, Communication No. 8/1991, U.N. Doc. CAT/C/11/D/8/1991
- *Kepa Urra Guridi v. Spain*, 2005, Communication No. 212/2002, U.N. Doc. CAT/C/34/D/212/2002
- *M'Barek v. Tunisia*, 24 January 2000, Communication No. 60/1996, U.N. Doc. CAT/C/23/D/60/1996
- *Nikolic v. Serbia and Montenegro*, 9 December 2005, Communication No. 174/2000, U.N. Doc. CAT/C/35/D/174/2000
- *O.R., M.M. and M.S. v. Argentina*, 1989, Communications Nos 1/1988, 2/1988, and 3/1988, U.N. Doc. A/45/44, at 108

UN Human Rights Committee

- *Amirov and Amirova v. Russian Federation*, 2 April 2009, Communication No. 1447/2006, U.N. GAOR, U.N. Doc. CCPR/C/95/D/1447/2006
- *Ana Rosario Celis Laureano v. Peru*, 1993, Communication No. 540/1993, U.N. Doc. CCPR/C/56/D/540/1993
- *Aouabdia v. Algeria*, 22 March 2011, Communication No. 1780/08, U.N. GAOR, U.N. Doc. CCPR/C/101/D/1780/2008
- *Baboeram et al. v. Suriname*, 1985, Communications Nos. 146/1983, 148-154/1983, U.N. Doc. Supp. No. 40 (A/40/40), at 187
- *Barbato v. Uruguay*, 1983, Communication No. 84/1981, U.N. GAOR, Suppl. No. 40, U.N. Doc. A/38/40, at 124
- *Bautista de Arellana v. Colombia*, 1995, Communication No. 563/1993, U.N. GAOR, U.N. Doc. CCPR/C/55/D/ 563/1993
- *Benitez v. Paraguay*, 2012, Communication No. 1829/208, U.N. GAOR, U.N. Doc. CCPR/C/104/D/1829/2008
- *Blanco v. Nicaragua*, 1994, Communication No. 328/1988, U.N. GAOR, U.N. Doc. CCPR/C/51/D/328/1988
- *Bleier v. Uruguay*, 1982, Communication No. R. 7/30, U.N. GAOR, Suppl. No. 40, U.N. Doc. A/37/40, at 130
- *Boucherf v. Algeria*, 2006, Communication No. 1196/2003, U.N. GAOR, U.N. Doc. CCPR/C/86/D/1196/2003