

# Contents

<b>1</b>	<b>Introduction</b> . . . . .	1
1.1	Relevance and Significance of Comparative Method . . . . .	2
1.2	Shaping International Criminal Law Through General Principles of Law Derivative from National Jurisdictions . . . . .	3
1.3	Structure . . . . .	5
<b>2</b>	<b>The Concept of Crime in Common Law Jurisdictions</b> . . . . .	7
2.1	The Concept of Crime in English Criminal Law . . . . .	7
2.1.1	<i>Actus Reus</i> . . . . .	8
2.1.2	<i>Mens Rea</i> . . . . .	9
2.2	The Concept of Crime in American Criminal Law . . . . .	24
2.2.1	<i>Actus Reus</i> . . . . .	24
2.2.2	<i>Mens Rea</i> . . . . .	25
2.3	Interim Conclusions . . . . .	36
<b>3</b>	<b>The Concept of Crime in Continental Law Jurisdictions</b> . . . . .	39
3.1	The Concept of Crime ( <i>Strafrechtliche Systembildung</i> ) in German Criminal Law . . . . .	39
3.1.1	Statutory Elements of Criminal Offence ( <i>Tatbestandsmäßigkeit</i> ) . . . . .	40
3.1.2	Unlawfulness ( <i>Rechtswidrigkeit</i> ) . . . . .	41
3.1.3	Culpability ( <i>Schuld</i> ) . . . . .	41
3.2	The Concept of Crime in French Criminal Law . . . . .	47
3.2.1	Intention ( <i>Le Dol</i> ) . . . . .	48
3.2.2	<i>Dol Éventuel</i> : An Intermediate <i>Mens Rea</i> Standard Between Intention and Negligence . . . . .	50
3.2.3	Negligence ( <i>La Faute Pénale</i> ) . . . . .	51
3.3	The Concept of Crime in Russian Criminal Law . . . . .	51
3.3.1	Constitutive Elements of Crime ( <i>Corpus Delicti, состав преступления</i> ) . . . . .	54

3.4	The Concept of Crime in Danish Criminal Law . . . . .	60
3.4.1	Mental Element of Crime ( <i>Tilregnelse</i> ) . . . . .	62
3.5	Interim Conclusions . . . . .	66
<b>4</b>	<b>The Concept of Crime in International Criminal Law . . . . .</b>	<b>69</b>
4.1	Introductory Remarks . . . . .	69
4.2	Typology of International Crimes . . . . .	70
4.2.1	War Crimes . . . . .	71
4.2.2	Crimes Against Humanity . . . . .	82
4.2.3	Genocide . . . . .	87
4.3	Structure of International Crimes . . . . .	92
4.3.1	Contextual Elements . . . . .	92
4.3.2	<i>Actus Reus</i> . . . . .	112
4.3.3	<i>Mens Rea</i> . . . . .	112
4.4	Interim Conclusions . . . . .	113
<b>5</b>	<b>Evolution of the <i>Mens Rea</i> Doctrine in International Criminal Law . . . . .</b>	<b>115</b>
5.1	Introductory Remarks . . . . .	115
5.2	Law on <i>Mens Rea</i> in the Ad Hoc Tribunals . . . . .	116
5.2.1	Intent . . . . .	117
5.2.2	Knowledge . . . . .	123
5.2.3	Other <i>Mens Rea</i> Standards in the Jurisprudence of the Ad Hoc Tribunals . . . . .	124
5.3	The <i>Mens Rea</i> Doctrine in the International Criminal Court . . . . .	125
5.3.1	The <i>Mens Rea</i> Concept in Retrospective: Drafting History . . . . .	126
5.3.2	Default Requirements of Intent and Knowledge Under Article 30 of the Rome Statute . . . . .	127
5.4	Interim Conclusions . . . . .	156
<b>6</b>	<b>Modalities of Criminal Liability in the Jurisprudence of International Criminal Courts and Tribunals . . . . .</b>	<b>159</b>
6.1	Principle of Individual Criminal Responsibility: Introductory Remarks . . . . .	159
6.2	Modes of Criminal Responsibility . . . . .	162
6.3	Principal Liability in International Criminal Law . . . . .	164
6.3.1	The Concept of Joint Criminal Enterprise as a Principal Form of Liability: Does It Really Stand for “Just Convict Everyone”? . . . . .	166
6.3.2	Modes of Principal Liability in the International Criminal Court . . . . .	198
6.4	Accomplice Liability in the Jurisprudence of International Criminal Courts and Tribunals . . . . .	220
6.4.1	Complicity Provisions in Retrospective . . . . .	220
6.4.2	Elements of Complicity . . . . .	222
6.4.3	Forms of Complicity . . . . .	223

- 6.5 Command Responsibility as a Mode of Criminal Liability in International Criminal Law . . . . . 238
  - 6.5.1 Command Responsibility in Retrospective . . . . . 239
  - 6.5.2 Command Responsibility in the Jurisprudence of the Ad Hoc Tribunals . . . . . 242
  - 6.5.3 Superior Responsibility Under Article 28 of the Rome Statute . . . . . 243
- 6.6 Interim Conclusions . . . . . 250
- 7 Grounds Excluding Criminal Responsibility in International Criminal Law . . . . . 253**
  - 7.1 Introductory Words: Justifications v Excuses . . . . . 253
    - 7.1.1 Insanity, Automatism and Burden of Proof . . . . . 254
    - 7.1.2 Voluntary and Involuntary Intoxication . . . . . 257
    - 7.1.3 Duress and Necessity . . . . . 259
    - 7.1.4 Self-Defence . . . . . 266
    - 7.1.5 Mistake of Fact . . . . . 269
    - 7.1.6 Mistake of Law . . . . . 271
    - 7.1.7 Superior Orders . . . . . 275
    - 7.1.8 Interim Conclusions . . . . . 276
- Jurisprudence . . . . . 279**
- Bibliography . . . . . 297**