Contents

		page		
Prefe	ace	xi		
Table	e of Cases	xiv		
Table of Treaties and other International Instruments				
Table	e of Abbreviations	lxiv		
PAR	TA: INTRODUCTION	1		
Intro	oduction: What is International Criminal Law?	3		
1.1	International criminal law	3		
1.2	Other concepts of international criminal law	5		
1.3	Sources of international criminal law	9		
1.4	International criminal law and other areas of law	13		
1.5	A body of criminal law	16		
The	Objectives of International Criminal Law	22		
2.1	Introduction	22		
2.2	The aims of international criminal justice	23		
2.3	Broader goals	30		
2.4	Other critiques of criminal accountability	36		
PAR	T B: PROSECUTIONS IN NATIONAL COURTS	41		
Juri	sdiction	43		
3.1	Introduction	43		
3.2	The forms of jurisdiction	43		
3.3	Conceptual matters	45		
3.4	The 'traditional' heads of jurisdiction	46		
3.5	Universal jurisdiction	50		
	Table Table Table Table Table Table PAR Intro 1.1 1.2 1.3 1.4 1.5 The 2.1 2.2 2.3 2.4 PAR Juris 3.1 3.2 3.3 3.4	Table of Abbreviations PART A: INTRODUCTION Introduction: What is International Criminal Law? 1.1 International criminal law 1.2 Other concepts of international criminal law 1.3 Sources of international criminal law 1.4 International criminal law and other areas of law 1.5 A body of criminal law The Objectives of International Criminal Law 2.1 Introduction 2.2 The aims of international criminal justice 2.3 Broader goals 2.4 Other critiques of criminal accountability PART B: PROSECUTIONS IN NATIONAL COURTS Jurisdiction 3.1 Introduction 3.2 The forms of jurisdiction 3.3 Conceptual matters 3.4 The 'traditional' heads of jurisdiction		

	_
V1	Contents
V I	Contents

vi		Contents			
	4.	. National Prosecutions of International Crimes			
		4.1	Introduction	64	
		4.2	National prosecutions	64	
		4.3	State obligations to prosecute or extradite	69	
		4.4	Domestic criminal law and criminal jurisdiction	73	
		4.5	Statutory limitations	77	
		4.6	The Non-retroactivity principle	79	
		4.7	Ne bis in idem or double jeopardy	80	
		4.8	Practical obstacles to national prosecutions	82	
	5.	State	e Cooperation with Respect to National Proceedings	85	
		5.1	Introduction	85	
		5.2	International agreements	86	
		5.3	Some basic features	87	
		5.4	Extradition	93	
		5.5	Mutual legal assistance	102	
		5.6	Transfer of proceedings	104	
		5.7	Enforcement of penalties	105	
		PAR	RT C: INTERNATIONAL PROSECUTIONS	107	
	6.	The	History of International Criminal Prosecutions: Nuremberg		
		and	Toyko	109	
		6.1	Introduction	109	
		6.2	The commission on the responsibility of the authors of the war	109	
		6.3	The Nuremberg International Military Tribunal	111	
		6.4	The Tokyo International Military Tribunal	115	
		6.5	Control Council Law No. 10 trials and military commissions		
			in the Pacific sphere	119	
	7.	The	ad hoc International Criminal Tribunals	122	
		7.1	Introduction	122	
		7.2	The International Criminal Tribunal for Yugoslavia	122	
		7.3	The International Criminal Tribunal for Rwanda	135	
	8.	The	International Criminal Court	144	
		8.1	Introduction	144	
		8.2	The creation of the ICC	144	
		8.3	Structure and composition of the ICC	149	

		Contents	vii
	8.4	Crimes within the jurisdiction of the ICC	150
	8.5	Applicable law	152
	8.6	Complementarity and other grounds of inadmissibility	153
	8.7	Initiation of proceedings (the 'trigger mechanisms')	163
	8.8	Jurisdiction: personal, territorial and temporal	166
	8.9	Deferral of investigation or prosecution: Article 16	169
	8.10	Enforcement of the ICC's decisions	170
	8.11	Opposition to the ICC	171
	8.12	Appraisal	178
9.	Othe	r Courts with International Elements	181
	9.1	Introduction	181
	9.2	Courts established by agreement between the United States and a State	182
	9.3	Courts established by the United Nations or other international	
		administration	188
	9.4	Courts established by a State with international support	194
	9.5	Lockerbie: an ad hoc solution for a particular incident	196
	9.6	Relationship with the ICC	197
	9.7	Appraisal	197
	P A R	T D: SUBSTANTIVE LAW OF INTERNATIONAL	
		CRIMES	201
10.	Geno	cide	203
	10.1	Introduction	203
	10.2	The protected groups	208
	10.3	Material elements	213
	10.4	Mental elements	220
	10.5	Other modes of participation	228
11.	Crim	es Against Humanity	230
	11.1	Introduction	230
	11.2	Common elements (the contextual threshold)	234
	11.3	Prohibited acts	245
12.	War	Crimes	267
	12.1	Introduction	267
	12.2	Common issues	279
	12.3	Specific offences	289

	_
V111	Contents
VIII	Contents

13.	Aggres	ssion	312
	13.1	Introduction	312
	13.2	Material elements	318
	13.3	Mental elements	327
	13.4	Prosecution of aggression in the ICC	328
14.	Transi	tional Crimes, Terrorism and Torture	334
	14.1	Introduction	334
	14.2	Terrorism	336
	14.3	Torture	352
	PART	E: PRINCIPLES AND PROCEDURES OF	
		INTERNATIONAL PROSECUTIONS	359
15.	Genera	al Principles of Liability	361
	15.1	Introduction	361
	15.2	Perpetration/commission	362
	15.3	Joint criminal enterprise	367
	15.4	Aiding and abetting	374
	15.5	Ordering, instigating, soliciting, inducing and inciting	377
	15.6	Planning, preparation, attempt and conspiracy	382
	15.7	Mental elements	384
	15.8	Command/superior responsibility	387
16.	Defences/Grounds for Excluding Criminal Responsibility		402
	16.1	Introduction	402
	16.2	The ICC Statute and defences	404
	16.3	Mental incapacity	405
	16.4	Intoxication	406
	16.5	Self-defence, defence of others and of property	408
	16.6	Duress and necessity	410
	16.7	Mistake of fact and law	414
	16.8	Superior orders	415
	16.9	Other 'defences'	420
17.	Proced	lures of International Criminal Investigations	
	and Pr	rosecutions	425
	17.1	International criminal procedures	425
	17.2	International criminal proceedings and human rights	430

		Contents	ix
	17.3	Actors in the proceedings and their roles	436
	17.4	Jurisdiction and admissibility procedures	441
	17.5	Commencement and discontinuance of a criminal investigation	443
	17.6	The criminal investigation	445
	17.7	Coercive measures	447
	17.8	Prosecution and indictment	454
	17.9	Pre-trial proceedings – preparations for trial	460
	17.10	Evidentiary rules	464
	17.11	Admission of guilt, guilty pleas, plea bargaining	467
	17.12	Trial and judgment	469
	17.13	Appeals proceedings	471
	17.14	Revision	474
	17.15	Offences against the administration of justice	475
	17.16	Some observations	476
18.	Victin	ns in the International Criminal Process	478
	18.1	Introduction	478
	18.2	Definition of victims	481
	18.3	Protection of victims and witnesses	481
	18.4	Victim participation in ICC criminal proceedings	484
	18.5	Reparations to victims	490
	18.6	An assessment	491
19.	Senter	ncing and Penalties	494
	19.1	International punishment of crimes	494
	19.2	Purposes of sentencing	496
	19.3	Sentencing practice	498
	19.4	Sentencing procedures	502
	19.5	Pardon, early release and review of sentence	503
	19.6	Enforcement	504
	PART	F: RELATIONSHIP BETWEEN NATIONAL AND	
		INTERNATIONAL SYSTEMS	507
20.	State (Cooperation with the International Courts and Tribunals	509
	20.1	Characteristics of the cooperation regimes	509
	20.2	Obligation to cooperate	510
	20.3	Non-States Parties and international organizations	515
	20.4	Non-compliance	517

	20.5	Cooperation and the ICC complementarity principle	519
	20.6	Authority to seek cooperation and defence rights	519
	20.7	Arrest and surrender	520
	20.8	Other forms of legal assistance	522
	20.9	Domestic implementation	520
	20.10	An assessment	528
21.	Immu	nities	531
	21.1	Introduction	531
	21.2	Functional immunity and national courts	538
	21.3	Functional immunity and international courts	545
	21.4	Personal immunity and national courts	545
	21.5	Personal immunity and international courts	549
	21.6	Conclusion	558
22.	Altern	atives and Complements to Criminal Prosecution	56
	22.1	Introduction	56
	22.2	Amnesties	563
	22.3	Truth commissions	571
	22.4	Lustration	575
	22.5	Reparations and civil claims	576
	22.6	Local justice mechanisms	576
23.	The Fu	uture of International Criminal Law	579
	23.1	Introduction	579
	23.2	International courts and tribunals	579
	23.3	Developments in national prosecutions of international crimes	580
	23.4	The trend towards accountability	582
	23.5	The development of international criminal law	585