

# Contents

<b>1</b>	<b>Introduction . . . . .</b>	<b>1</b>
	References . . . . .	6
<b>Part I Applicability of International Human Rights Law to the International Criminal Tribunals</b>		
<b>2</b>	<b>Human Rights Obligations of the ICTs under International Law . . . . .</b>	<b>9</b>
2.1	Introduction . . . . .	9
2.2	International Legal Personality of the ICTs . . . . .	10
2.3	Are International Organizations Bound by International Law? . . . . .	12
2.3.1	Transfer Thesis . . . . .	13
2.3.2	Subject Thesis . . . . .	20
2.4	The Meaning of ‘Being Bound’ by General IHRL . . . . .	26
2.4.1	Indeterminacy of ‘General International Law’ . . . . .	26
2.4.2	Inherent Flexibility of Human Rights Standards . . . . .	31
2.4.3	Permissibility of Lex Specialis . . . . .	38
2.5	Conclusion . . . . .	41
	References . . . . .	42
<b>3</b>	<b>Human Rights Obligations of the ICTs Based on their Internal Law and Practice . . . . .</b>	<b>47</b>
3.1	Introduction . . . . .	47
3.2	The <i>ad hoc</i> Tribunals . . . . .	48
3.2.1	Internal Law and Practice . . . . .	48
3.2.2	Case Law . . . . .	59
3.3	The ICC . . . . .	64
3.3.1	Article 21(1): Applicable Law . . . . .	64
3.3.2	Article 21(3): Consistency with Internationally Recognized Human Rights . . . . .	73
3.4	Methodological Complications: Defining the Scope of ‘Internationally Recognized Human Rights’ . . . . .	91

3.5	Contextualization: Adapting Human Rights to the ICTs' Context . . . . .	97
3.6	Conclusion . . . . .	104
	References . . . . .	105
<b>Part II The Interpretation and Application of Human Rights Norms by the International Criminal Tribunals</b>		
<b>4</b>	<b>The Right to Privacy and Investigative Measures . . . . .</b>	113
4.1	Introduction . . . . .	113
4.2	IHRL Framework . . . . .	115
4.2.1	The Right to Privacy in the Context of Domestic Criminal Investigations . . . . .	116
4.2.2	The Right to Privacy in the Context of Inter-State Cooperation in Criminal Matters . . . . .	126
4.3	Privacy and Direct Coercive Action by the ICTs . . . . .	139
4.3.1	The ad hoc Tribunals . . . . .	139
4.3.2	The International Criminal Court . . . . .	146
4.4	Privacy and Coercive Measures Executed in Cooperation with States . . . . .	149
4.4.1	The ad hoc Tribunals . . . . .	151
4.4.2	The International Criminal Court . . . . .	166
4.5	Comparison and the ICTs' Use of IHRL . . . . .	179
4.5.1	Comparing the ICTs' Approach to the Right to Privacy to IHRL . . . . .	179
4.5.2	The ICTs' Use of IHRL on the Right to Privacy . . . . .	182
4.6	Conclusion . . . . .	184
	References . . . . .	186
<b>5</b>	<b>The Right to Liberty and Provisional Release . . . . .</b>	189
5.1	Introduction . . . . .	189
5.2	IHRL Framework . . . . .	190
5.2.1	General Requirements . . . . .	191
5.2.2	Reasonable Suspicion . . . . .	196
5.2.3	Relevant and Sufficient Reasons for Detention . . . . .	196
5.2.4	Conclusion . . . . .	201
5.3	Provisional Release Before the ad hoc Tribunals . . . . .	201
5.3.1	The Original Requirement of 'Exceptional Circumstances' Justifying Release . . . . .	204
5.3.2	Requirements for Release . . . . .	210
5.3.3	Burden and Standard of Proof . . . . .	237
5.3.4	Comparison and the ad hoc Tribunals' Use of IHRL . . . . .	241
5.4	Interim Release Before the ICC . . . . .	249
5.4.1	Persistence of a Reasonable Suspicion . . . . .	255
5.4.2	Reasons Necessitating Arrest and Detention . . . . .	255
5.4.3	Conditional Release . . . . .	271
5.4.4	Review of the Length of Detention: Article 60(4) . . . . .	273

5.4.5 Burden and Standard of Proof . . . . .	276
5.4.6 Comparison and the ICC's Use of IHRL . . . . .	278
5.5 Conclusion . . . . .	284
References . . . . .	286
<b>6 The Right to Be Tried Without Undue Delay . . . . .</b>	<b>289</b>
6.1 Introduction . . . . .	289
6.2 IHRL Framework . . . . .	290
6.2.1 Scope of the Right to Be Tried Without Undue Delay . . . . .	292
6.2.2 Relevant Parameters to Determine a Violation . . . . .	293
6.2.3 Interim Conclusion . . . . .	301
6.3 Trial Without Undue Delay Before the ad hoc Tribunals . . . . .	302
6.3.1 Scope of the Right to Be Tried Without Undue Delay . . . . .	303
6.3.2 Relevant Parameters to Determine a Violation . . . . .	305
6.3.3 Comparison and the Tribunals' Use of IHRL . . . . .	332
6.4 Trial Without Undue Delay Before the ICC . . . . .	338
6.4.1 The Right to Be Tried Without Undue Delay in the Case Law of the ICC . . . . .	339
6.4.2 Analysis: Comparison and the ICC's Use of IHRL . . . . .	345
6.5 Conclusion . . . . .	348
References . . . . .	350

### Part III Synthesis, Conclusion & Recommendations

<b>7 Adherence and Contextualization: Towards a Methodological Framework for the Interpretation and Application of Human Rights Norms . . . . .</b>	<b>355</b>
7.1 Introduction . . . . .	355
7.2 Adherence to IHRL . . . . .	356
7.2.1 Legislative Influence . . . . .	356
7.2.2 Consistent Interpretation . . . . .	358
7.3 Contextualization . . . . .	361
7.3.1 The Specific Context of International Criminal Justice . . . . .	362
7.3.2 Modalities of Contextualization . . . . .	371
7.4 Proper Contextualization of Human Rights Norms: A Methodology . . . . .	380
7.4.1 Determining the Applicable Human Rights Norm . . . . .	380
7.4.2 Determining the Nature, Scope, and Content of the Applicable Right . . . . .	384
7.4.3 Analyzing the Context in Which the Right Must Be Applied . . . . .	386
7.4.4 Interpreting and Applying the Right in the ICT Context . . . . .	387
7.4.5 The Methodological Framework in Practice . . . . .	388
7.5 Conclusion . . . . .	392
References . . . . .	394

<b>8 Summary and Conclusion .....</b>	397
8.1 Part I: Applicability of IHRL to the ICTs.....	398
8.2 Part II: Interpretation and Application of Human Rights by the ICTs.....	400
8.3 Part III: Towards a Methodological Framework.....	402
References.....	406
<b>Annexes .....</b>	407
<b>Bibliography .....</b>	417
<b>Index.....</b>	433