

BRIDGING DIVIDES IN TRANSITIONAL JUSTICE

## SERIES ON TRANSITIONAL JUSTICE

The Series on *Transitional Justice* offers a platform for high-quality research within the rapidly growing field of transitional justice. The research is, of necessity inter-disciplinary in nature, drawing from disciplines such as law, political science, history, sociology, criminology, anthropology and psychology, as well as from various specialised fields of study such as human rights, victimology and peace studies. Furthermore, the research is international in outlook, drawing on the knowledge and experience of academics and other specialists in many different regions of the world.

The series is aimed at a variety of audiences who are either working or interested in fields such as crime and justice; human rights; humanitarian law and human security; conflict resolution and peace building. These audiences include academics, researchers, students, policy makers, practitioners, non-governmental organisations and the media.

All books published within the series are subject to a double-blind peer review by recognised authorities in the field.

### **The General Editors of the Series are:**

- Prof. Stephan Parmentier (Catholic University of Leuven, Belgium)
- Prof. Jeremy Sarkin (University of South Africa)
- Prof. Elmar Weitekamp (University of Tübingen, Germany)
- Mina Rauschenbach (Université de Lausanne and University of Leuven) (Assistant Editor)

The general editors receive the support from an Editorial Committee and an Advisory Board, consisting of internationally renowned academics and practitioners.

### **Published titles within this Series:**

9. Edda Kristjánsdóttir, André Nollkaemper and Cedric Ryngaert (eds.), *International Law in Domestic Courts: Rule of Law Reform in Post-conflict States* (2012), 978-1-78068-041-5
10. Bas van Stokkom, Neelke Doorn and Paul van Tongeren (eds.), *Public Forgiveness in Post-Conflict Contexts* (2012), 978-1-78068-044-6
11. Ilse Derluyn, Cindy Mels, Stephan Parmentier and Wouter Vandenhole (eds.), *Re-Member. Rehabilitation, Reintegration and Reconciliation of War-Affected Children* (2012), 97894-000-0027-4
12. Anne-Marie de Brouwer, Charlotte Ku, Renée Römkens and Larissa van den Herik (eds.), *Sexual Violence as an International Crime: Interdisciplinary Approaches* (2012), 978-1-78068-002-6
13. Estelle Zinsstag and Martha Albertson Fineman (eds.), *Feminist Perspectives on Transitional Justice: From International and Criminal to Alternative Forms of Justice* (2013), 978-1-78068-142-9
14. Josep M. Tamarit Sumalla, *Historical Memory and Criminal Justice in Spain. A Case of Late Transitional Justice* (2013), 978-1-78068-143-6
15. Catherine Jenkins (ed.), Max du Plessis (ed.), *Law, Nation building and Transformation The South African experience in perspective* (2014), 978-1-78068-184-9
16. Susanne Buckley-Zistel and Stefanie Schäfer (eds.), *Memorials in Times of Transition* (2014), 978-1-78068-211-2
17. Nico Wouters (ed.), *Transitional Justice and Memory in Europe (1945–2013)*, 978-1-78068-214-3
18. Agata Fijalkowski and Raluca Grosescu (eds.), *Transitional Criminal Justice in Post-Dictatorial and Post-Conflict Societies*, 978-1-78068-260-0
19. S. Elizabeth Bird and Fraser M. Ottanelli (eds.), *The Performance of Memory as Transitional Justice* 978-1-78068-262-4
20. Bo Viktor Nylund, *Child Soldiers and Transitional Justice*, 978-1-78068-394-2
21. Peter Malcontent (ed.), *Facing the Past: Amending Historical Injustices through Instruments of Transitional Justice*, 978-1-78068-403-1
22. Francesca Capone, *Reparations for Child Victims of Armed Conflict: State of the Field and Current Challenges*, 978-1-78068-438-3

**For previous volumes in the series, please visit <http://tj.intersentia.com>**

SERIES ON TRANSITIONAL JUSTICE, Volume 23

BRIDGING DIVIDES  
IN TRANSITIONAL JUSTICE

The Extraordinary Chambers  
in the Courts of Cambodia

Cheryl S. WHITE



intersentia

Cambridge – Antwerp – Portland

Intersentia Ltd  
Sheraton House | Castle Park  
Cambridge | CB3 0AX | United Kingdom  
Tel.: +44 1223 370 170 | Fax: +44 1223 370 169  
Email: mail@intersentia.co.uk  
www.intersentia.com | www.intersentia.co.uk

*Distribution for the UK and Ireland:*  
NBN International  
Airport Business Centre, 10 Thornbury Road  
Plymouth, PL6 7 PP  
United Kingdom  
Tel.: +44 1752 202 301 | Fax: +44 1752 202 331  
Email: orders@nbninternational.com

*Distribution for Europe and all other countries:*  
Intersentia Publishing nv  
Groenstraat 31  
2640 Mortsel  
Belgium  
Tel.: +32 3 680 15 50 | Fax: +32 3 658 71 21  
Email: mail@intersentia.be

*Distribution for the USA and Canada:*  
International Specialized Book Services  
920 NE 58th Ave. Suite 300  
Portland, OR 97213  
USA  
Tel.: +1 800 944 6190 (toll free) | Fax: +1 503 280 8832  
Email: info@isbs.com

## Bridging Divides in Transitional Justice

© Cheryl S. White 2017

The author has asserted the right under the Copyright, Designs and Patents Act 1988, to be identified as author of this work.

No part of this book may be reproduced, stored in a retrieval system, or transmitted, in any form, or by any means, without prior written permission from Intersentia, or as expressly permitted by law or under the terms agreed with the appropriate reprographic rights organisation. Enquiries concerning reproduction which may not be covered by the above should be addressed to Intersentia at the address above.

Artwork on cover: Author Jan Jordaan, title 'Hurt', medium Linocut, 1999.  
From the Universal Declaration of Human Rights – International Print Portfolio,  
Article 5, published by Art for Humanity, South Africa, 1999.

ISBN 978-1-78068-440-6  
D/2017/7849/29  
NUR 828



British Library Cataloguing in Publication Data. A catalogue record for this book is available from the British Library.

## ACKNOWLEDGEMENTS

This book is derived from a PhD thesis produced at the Australian National University from 2009 to 2014. I am indebted to my supervisor, Hilary Charlesworth, for her patient assistance during my candidature and advice upon completion. My examiners, Suzannah Linton, Kieran McEvoy and Sarah Williams were also the source of thoughtful scholarly guidance on the future directions of the work.

I am grateful to have been able to revise the manuscript at the ANU's School of Regulation and Global Governance (RegNet) and to enjoy the collegiality for which it is well known. Special thanks are due to Imelda Deinla and Emma Larking for their mentoring, insights and invaluable practical assistance as I undertook that task. Romina Paskotic and Julia Wee also provided essential administrative and moral support.

I would also like to acknowledge the help and encouragement of my teaching colleagues at the University of Newcastle, School of Law in Australia. I am grateful to those who listened to my initial ideas and encouraged me to take them further, especially Ted Wright, Neil Foster, Amy Maguire, Jeff McGee and Brendan Murphy.

The criminal trial as a transitional justice mechanism may be construed narrowly or broadly. In this book I take a broad approach to trial justice and try to address the various internal and external factors that may have an impact on the proceedings of an active internationalised court. To this end I have made extensive use of ECCC court documents including trial transcripts. Some of the English translations of the transcripts were poor, and for this reason the excerpts in the book were edited for the sake of clarity while retaining any cultural nuance as much as possible. Of course, all errors remain my own.

The editorial team at Intersentia gave wonderful support to this project. I thank Melanie Hamill and Tom Schiers in particular for their forbearance as I included new material at the final hour on the appeal judgment concluding the ECCC's second trial.

I also thank my family for quietly supporting me in the venture and dedicate the book to my late father James Henry White. Finally, in this work as in all the challenges of my life, God has given me strength and for that I am eternally grateful.

January 2017



# CONTENTS

<i>Acknowledgements</i> .....	v
<i>Table of Cases</i> .....	xiii
<i>Table of Legislation</i> .....	xix
<i>Table of Treaties</i> .....	xxi
<i>List of Abbreviations</i> .....	xxiii
<b>Chapter 1. Introduction</b> .....	1
1.1. Expressivism and Communication in Transitional Trials .....	1
1.2. The Goals of International Tribunals .....	3
1.3. Communication and Trial Procedure .....	8
1.4. The ECCC as a Case Study .....	10
1.5. Chapter Outline .....	12
<b>Chapter 2. Trials in Transitional Justice Theory</b> .....	17
2.1. Introduction .....	17
2.2. Expressivism and Social Meaning .....	21
2.2.1. Expressivism and National Legal Action .....	22
2.2.2. Expressivism and Criminal Law .....	23
2.2.3. The European Union and Expressive Criminal Law .....	27
2.3. Criminal Law and Transitional Societies .....	28
2.3.1. Criminal Law Principles and Atrocity Crimes .....	28
2.3.2. Justifying Punishment in Transitional Societies .....	29
2.4. The Expressivism of International Trials .....	32
2.5. Towards a Communicative Theory of the Transitional Trial .....	36
2.5.1. Trial Process as Dialogue in Transitional Justice Theory .....	39
2.5.2. Communication and Representation in the Transitional Trial .....	42
2.5.3. Communication, Procedural Fairness and Justice .....	44
2.6. Conclusion .....	45
<b>Chapter 3. The Development of the Transitional Trial</b> .....	47
3.1. Introduction .....	47
3.2. Prosecuting International Crimes .....	47
3.2.1. The International Military Tribunal at Nuremberg .....	49

3.2.2.	The International Military Tribunal for the Far East in Tokyo . . . . .	53
3.3.	International Crimes and the Cold War . . . . .	54
3.4.	Creating International Criminal Courts . . . . .	58
3.4.1.	The International Criminal Tribunal for the Former Yugoslavia . . . . .	59
3.4.2.	International Criminal Tribunal for Rwanda (ICTR) . . . . .	60
3.4.3.	Norm Development by the Ad Hoc Tribunals . . . . .	61
3.4.4.	Expressive Surplus and Communicative Deficit at the Ad Hoc Tribunals . . . . .	62
3.5.	The International Criminal Court (ICC) . . . . .	65
3.5.1.	The Mission of the ICC . . . . .	65
3.5.2.	Primacy of National Jurisdiction and Complementarity . . . . .	66
3.5.3.	Victims' Participation and Redress . . . . .	67
3.5.4.	Expressive vs. Communicative Dimensions of the ICC Procedure . . . . .	71
3.6.	Hybrid and Internationalised Courts . . . . .	74
3.6.1.	Courts Under UN Transitional Authority . . . . .	76
3.6.1.1.	East Timor . . . . .	77
3.6.1.2.	Kosovo . . . . .	81
3.6.2.	Hybrid Courts . . . . .	85
3.6.2.1.	The Special Court for Sierra Leone . . . . .	85
3.6.2.2.	The Special Tribunal for Lebanon . . . . .	89
3.6.2.3.	The Iraqi High Tribunal . . . . .	93
3.7.	Conclusion . . . . .	94

**Chapter 4. The Creation of the Extraordinary Chambers in the Courts of Cambodia . . . . . 97**

4.1.	Introduction . . . . .	97
4.2.	Political Culture and <i>Realpolitik</i> . . . . .	97
4.2.1.	Royalist Rule and <i>Realpolitik</i> . . . . .	99
4.2.2.	The Rise of the Khmer Rouge . . . . .	101
4.2.3.	Cambodia Under Democratic Kampuchea . . . . .	103
4.2.4.	Defeat of Democratic Kampuchea . . . . .	106
4.3.	Cambodia After the Khmer Rouge . . . . .	107
4.3.1.	Geopolitics and Khmer Rouge Longevity . . . . .	108
4.3.2.	The People's Revolutionary Tribunal . . . . .	110
4.3.3.	Law, Justice and Civil War 1979–1989 . . . . .	112
4.3.4.	Peace Negotiations and UNTAC . . . . .	113
4.4.	Politics and the Creation of the ECCC . . . . .	118
4.4.1.	The Political Currency of Impunity . . . . .	118
4.4.2.	Drama and the Death of an Old Actor . . . . .	119



4.4.3.	The International Players .....	120
4.5.	Negotiating a Tribunal to Prosecute the Khmer Rouge .....	121
4.5.1.	Expressive Negotiating Positions.....	122
4.5.2.	Toughing it Out .....	123
4.5.3.	Protest, Cynicism and Optimism .....	126
4.5.4.	After the Storm.....	128
4.6.	Conclusion .....	133
 <b>Chapter 5. Inquisitorial Criminal Procedure at the ECCC .....</b>		<b>135</b>
5.1.	Introduction .....	135
5.2.	Legal Framework of the ECCC .....	136
5.2.1.	The Agreement and the ECCC Law .....	136
5.2.2.	Jurisdiction .....	138
5.2.2.1.	Temporal Jurisdiction.....	138
5.2.2.2.	Subject-Matter Jurisdiction .....	139
5.2.2.3.	Personal Jurisdiction .....	140
5.2.2.4.	The ECCC Internal Rules.....	143
5.3.	Drafting the Internal Rules.....	144
5.3.1.	The Legality of the Internal Rules .....	145
5.3.2.	The Internal Rules and Other Sources of Law .....	147
5.4.	Implementing the Criminal Procedure .....	148
5.4.1.	Shared Prosecutions: National and International .....	149
5.4.2.	Shared Defence .....	152
5.4.3.	Shared Investigations.....	153
5.5.	The Composition of Chambers and Judicial Decision-Making .....	156
5.5.1.	The Judiciary.....	156
5.5.2.	Decision-Making by Supermajority or Default.....	157
5.6.	The Civil Party Action.....	158
5.6.1.	Designing the ECCC Victim Participation Scheme .....	160
5.6.2.	Admitting Civil Parties to ECCC Trials .....	161
5.6.3.	Civil Parties and Reconciliation.....	162
5.6.4.	Modifying the Civil Party Scheme .....	164
5.6.5.	Reparations.....	165
5.7.	Other ECCC Inquisitorial Elements.....	167
5.7.1.	Participatory Procedure .....	168
5.7.2.	Representative Processes .....	168
5.8.	Conclusion .....	169
 <b>Chapter 6. Trial Dialogue in Case 001.....</b>		<b>171</b>
6.1.	Introduction .....	171
6.2.	The Case File.....	171

6.2.1.	Profile of the Accused . . . . .	172
6.2.2.	The Court's Examination of Duch . . . . .	176
6.2.3.	Duch and CPK Policy . . . . .	177
6.3.	The Co-Prosecution Voice . . . . .	180
6.3.1.	The Co-Defence Response . . . . .	180
6.3.2.	The Participation of the Accused at Trial . . . . .	181
6.4.	Trial Dialogue and Witness Testimony . . . . .	182
6.4.1.	Mam Nai . . . . .	182
6.4.2.	François Bizot at M-13 . . . . .	185
6.4.3.	David Chandler on the CPK in History . . . . .	186
6.4.3.1	S-21 – The Total Institution . . . . .	186
6.4.3.2.	Duch's Character and Conduct at S-21 . . . . .	188
6.4.3.3.	S-21 and Dehumanisation . . . . .	189
6.4.4.	Françoise Sironi-Guilbaud and Ka Sunbaunat . . . . .	190
6.4.5.	Chhim Sotheara . . . . .	196
6.5.	Duch's Bid for Release . . . . .	198
6.6.	Conclusion . . . . .	199
 <b>Chapter 7. The Voice of the Victim . . . . .</b>		<b>201</b>
7.1.	Introduction . . . . .	201
7.2.	The Victim and Transitional Trials . . . . .	201
7.3.	Fairness and Legitimacy in International Trials . . . . .	203
7.3.1.	Victim-Witness Testimony at the Ad Hoc Tribunals . . . . .	204
7.3.2.	The Victim at the ICC . . . . .	205
7.4.	Victim Participation at the ECCC . . . . .	206
7.4.1.	Civil Party Questioning of Witnesses . . . . .	206
7.4.2.	Limits on Civil Party Submissions on Sentencing . . . . .	207
7.4.3.	Civil Parties and Character Evidence . . . . .	208
7.5.	Civil Party Story-Telling: Case 001 and Case 002 . . . . .	210
7.5.1.	Case 001: Direct Victims of S-21 . . . . .	211
7.5.1.1.	Vann Nath . . . . .	211
7.5.1.2.	Chum Mey . . . . .	213
7.5.1.3.	Bou Meng . . . . .	215
7.5.2.	Case 001: Indirect Victims . . . . .	216
7.5.2.1.	Bou Thon . . . . .	216
7.5.2.2.	Antonya Tioulong . . . . .	217
7.5.2.3.	Hav Sophea . . . . .	219
7.5.2.4.	Neth Phally . . . . .	219
7.5.2.5.	Robert Hamill . . . . .	220
7.5.2.6.	Chum Sirath . . . . .	222
7.5.3.	Civil Parties and Case 002/01 . . . . .	224
7.5.3.1.	Statements of Suffering . . . . .	225
7.5.3.2.	Victim Impact Hearings . . . . .	228

7.5.4. Civil Parties and Case 002/02. . . . .	234
7.6. Conclusion . . . . .	238
<b>Chapter 8. The Voice of the Court in Judgment: Case 001 . . . . .</b>	<b>241</b>
8.1. Introduction . . . . .	241
8.2. Personal Jurisdiction . . . . .	242
8.2.1. The Trial Chamber’s Decision . . . . .	242
8.2.2. The Supreme Court’s Appraisal . . . . .	243
8.2.2.1. Scope of the Terminology ‘Senior Leaders’ and ‘Most Responsible’ . . . . .	244
8.2.2.2. Interpreting the Terminology . . . . .	245
8.3. Normative Analyses of Duch’s Crimes . . . . .	248
8.3.1. In the Trial Chamber. . . . .	248
8.3.1.1. Proving Grave Breaches of the Geneva Conventions. . . . .	249
8.3.1.2. Proving Crimes against Humanity Charges . . . . .	251
8.3.2. In the Supreme Court . . . . .	253
8.4. Sentence . . . . .	254
8.4.1. The Trial Chamber Findings on Sentence . . . . .	254
8.4.2. The Supreme Court Review . . . . .	257
8.5. SCC Review of the Remedy for Unlawful Detention . . . . .	260
8.6. Civil Party Applications . . . . .	262
8.6.1. Trial Chamber Determination . . . . .	262
8.6.2. Supreme Court Determination of Civil Party Appeals. . . . .	263
8.6.2.1. The Definition of Victim at the ECCC. . . . .	263
8.6.2.2. Civil Party Application Process. . . . .	264
8.6.2.3. Trial Chamber Error in Determining the Standard of Proof? . . . . .	265
8.7. Reparations. . . . .	266
8.7.1. Trial Chamber Ruling . . . . .	266
8.7.2. Supreme Court Review. . . . .	266
8.8. Conclusion . . . . .	267
<b>Chapter 9. Conclusion . . . . .</b>	<b>271</b>
9.1. Introduction . . . . .	271
9.2. Elements of Communication: Representation and Dialogue . . . . .	272
9.2.1. Representation: Civil Parties . . . . .	273
9.2.1.1. Fairness Concerns. . . . .	273
9.2.1.2. Narrative Statements. . . . .	276
9.2.2. Representation: Outsider Perspectives . . . . .	277
9.2.3. Representation: National and International ECCC Staff . . . . .	279

9.3. Trial Dialogue.....	281
9.3.1. Victim–Perpetrator Equation .....	282
9.3.2. Trauma in Post-Khmer Rouge Cambodia .....	283
9.4. Communication and Judgment.....	284
9.4.1. Civil Parties.....	284
9.4.2. Reparations.....	287
9.5. Civil Society Engagement with the ECCC.....	289
9.6. Assessment After Two Trials .....	295
9.7. ECCC Legacy and Communication .....	303
<i>Bibliography</i> .....	307
<i>Index</i> .....	329
<i>About the Author</i> .....	335

# TABLE OF CASES

## INTERNATIONAL COURTS

### EUROPEAN COURT OF HUMAN RIGHTS

<i>Chraidi v. Germany (Chamber Judgment)</i> (Application No. 65655/01, 26 October 2006).....	261
<i>Dzelili v. Germany (Chamber Judgment)</i> (Application No. 65745/01, 10 November 2005).....	261
<i>Korbley v. Hungary (Grand Chamber Judgment)</i> (Application No. 9174/02, 19 September 2008) .....	251

### INTERNATIONAL COURT OF JUSTICE

<i>Accordance with International Law of the Declaration of Independence in Respect of Kosovo (Advisory Opinion)</i> ICJ Reports 2010 p. 403.....	84
--	----

### INTERNATIONAL CRIMINAL COURT

<i>Prosecutor v. Al Bashir</i> (Decision on Applications a/0011/06 to a/0013/06 and a/0443/09 to a/0450 for Participation in the Proceedings at the Pre-trial stage of the Case), Pre-Trial Chamber (No. ICC-02/05-01/09 10 December 2009) .....	68
<i>Prosecutor v. Katanga &amp; Ngudjolo</i> (Decision on the Modalities of Victim Participation at Trial) Trial Chamber (No. ICC-01-/04-01/07-1788-Teng 22 January 2010).....	68, 69
<i>Prosecutor v. Lubanga</i> (Decision establishing the principles and procedures to be applied to reparations) Trial Chamber 1 (No. ICC-01/04-01/06 7 August 2012).....	288
<i>Prosecutor v. Lubanga</i> (Decision on the Defence observation regarding the right of the legal representatives of victims to question defence witnesses and on the notion of personal interest on the defence application to exclude certain representatives of victims from the Chamber during the non-public evidence of various defence witnesses) Trial Chamber (No. ICC-01/04-01/06-2340 11 March 2010).....	69
<i>Prosecutor v. Lubanga</i> (Decision on the Manner of Questioning Witnesses by the Legal Representatives of Victims) Trial Chamber (No. ICC-01/04-01/06 16 September 2009) .....	68, 69

<i>Prosecutor v. Lubanga</i> (Judgment on the Appeal of Mr Thomas Lubanga Dyilo against the Decision on the Defence Challenge to Jurisdiction of the Court pursuant to Article 19(2)(a) of the Statute of 3 October 2006) Appeals Chamber (No. ICC-01/04-01/06 (OA4), 14 December 2006) .....	148
<i>Prosecutor v. Lubanga</i> (Judgment on the Appeals of the Prosecutor and the Defence against Trial Chamber 1's Decision on Victims' Participation of 18 January 2008) Appeals Chamber (No. ICC-01/04-01/06-1432 11 July 2008) .....	69
<i>Prosecutor v. Lubanga</i> (Decision on victims' participation) Trial Chamber (No. ICC-01/04-01/06-1119, 18 January 2008).....	68
<i>Prosecutor v. Lubango</i> (Sentencing Judgment) Trial Chamber (No. ICC-01/04/06-2901 10 July 2012) .....	73

## INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA

<i>Prosecutor v. Aleksovski</i> (Judgment) Appeals Chamber (Case No. IT-95-14/1, 24 March 2000).....	32
<i>Prosecutor v. Delalić, Mucić, Delić &amp; Landžo</i> (Judgment) Trial Chamber, (Case No. ICTY-IT-96-21-T, 22 November 1998).....	61
<i>Prosecutor v. Delalić, Mucić, Delić &amp; Landžo</i> ('Celebici') (Appeal Judgment) Appeals Chamber (Case No. ICTY-IT-96-21A, 20 February 2001).....	252, 253
<i>Prosecutor v. Kunaric, Kovac &amp; Vukovic</i> (Judgment) Trial Chamber (Case No. ICTY IT-96-23 & IT 96-23/1, 22 November 2001) .....	61
<i>Prosecutor v. Kunaric, Kovac &amp; Vukovic</i> (Appeal Judgment) Appeals Chamber (Case No. ICTY-IT-96-23 & IT 96-23/1, 22 November 2002) .....	61
<i>Prosecutor v. Obrenović</i> (Sentencing Judgment) Trial Chamber 1, (Case No. ICTY-IT-02-60/2-S, 10 December 2003).....	181
<i>Prosecutor v. Tadic</i> (Appeal Judgment) Appeals Chamber (Case No. ICTY-IT-94-1-A, 15 July 1999) .....	251
<i>Prosecutor v. Tadic</i> (Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction) Trial Chamber (Case No. ICTY-94-1-AR72, 2 October 1995) .....	61

## INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

<i>Prosecutor v. Akayesu</i> (Judgment) Trial Chamber 1 (Case No. ICTR-96-4-T, 2 September 1998) .....	61
<i>Prosecutor v. Barayagwiza</i> (Appeal Judgment) AC (Case No. ICTR-97-19, 3 November 1999).....	148, 260
<i>Prosecutor v. Kambanda</i> (Judgment) Trial Chamber 1 (Case No. ICTR-97-23-S, 4 September 1998) .....	61
<i>Prosecutor v. Musema</i> (Judgment) Trial Chamber 1 (Case No. ICTR 96-13 27 January 2000).....	61

## INTERNATIONAL MILITARY TRIBUNAL AT NUREMBURG

'International Military Tribunal (Nuremburg), Judgment and Sentences, October 1 1946' (1947) 41 <i>American Journal of International Law</i> 172.....	51
Opening Statement of Supreme Court Justice, Robert H. Jackson, Chief Prosecutor for the International Military Tribunal, 21 November 1945, reprinted in <i>Trial of the Major War Criminals before the International Military Tribunal</i> (1948) Volume 2, p. 99.....	52

## UNITED NATIONS HUMAN RIGHTS COMMITTEE

<i>Siewpersaud et al. v. Trinidad and Tobago</i> , United Nations Human Rights Committee, Views. UN Doc. CCPR/C/81/D/938/2000 (19 August 2004) .....	261
--	-----

## HYBRID AND INTERNATIONALISED COURTS

## EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA

<i>Closing Order Indicting Kaing Guek Eav alias Duch</i> , Office of the Co-Investigating Judges (Case File No. 001/18-07-2007-ECCC-OCIJ, 8 August 2008). .....	142, 172
<i>Closing Order: Nuon Chea, Ieng Sary, Khieu Samphân, Thirith Sary</i> Office of the Co-Investigating Judges (Case File.No.002/19-09-2007 ECCC/OCIJ, 15 September 2010) .....	119, 129
<i>Consideration of the Pre-Trial Chamber Regarding the Disagreement between the Co-Prosecutors pursuant to Internal Rule 71 Pre-Trial Chamber (Disagreement 001/18-11-ECCC/PTC, 18 August 2009)</i> .....	151
<i>Co-Prosecutors v. Kaing Guek Eav alias Duch (Judgment)</i> Trial Chamber (ECCC TC-Case File No. 001/18-07-2007 ECCC/TC, 26 July 2010) .....	287
<i>Co-Prosecutors v Nuon Chea and Khieu Samphân (Judgment)</i> Trial Chamber (ECCC/TC-Case File. 002/19-09-2007 ECCC/TC, 7 August 2014) .....	288, 296
<i>Decision on Additional Severance of Case 002 and Scope of Case 002/02</i> Trial Chamber (Case File No. 002/19-09-2007/ECCC/TC, 4 April 2014) .....	131
<i>Decision on Civil Party Co-lawyers' Joint Request for a Ruling on the Standing of Civil Party Lawyers to make Submissions on Sentencing and Directions Concerning the Questioning of the Accused, Experts and Witnesses Testifying on Character</i> , Trial Chamber (Case File No. 001/18-07-2007-ECCC/TC, 9 October 2009) .....	208, 274, 275
<i>Decision on Civil Party Participation in Provisional Detention Appeals</i> Pre-Trial Chamber, (Case No. 002/19-09-2007-ECCC/OCIJ-PTC 01, 20 March 2008) .....	163
<i>Decision on Ieng Sary's Appeal Against the Letter concerning Request for Information Concerning Legal Officer David Boyle</i> Pre-Trial Chamber (Case File No. 002/19-09-2007/ECCC/PTC, 28 August 2008) .....	154

<i>Decision on Ieng Sary’s Application to Disqualify Co-Investigating Judge Marcel Lemonde</i> Pre-Trial Chamber (Case File No. 002/19-09-2007/ECCC/PTC (9 December 2009) .....	154
<i>Decision on Ieng Sary’s Request for Appropriate Measures Concerning Certain Statements by Prime Minister Hun Sen Challenging the Independence of the Pre-Trial Chamber Judges Katinka Lahuis and Rowan Downing</i> Pre-Trial Chamber (Case File No.002/19-09-2007/ECCC/PTC, 30 November 2009).....	154
<i>Decision on Nuon Chea’s Appeal against Order Refusing Request for Annulment</i> Pre-Trial Chamber, (Case No. 002/19-09-2007-ECCC/OCIJ (PTC 06) D55/18, 26 August 2008) .....	147
<i>Decision on Request for Release</i> , Trial Chamber (Case File No. 001/18-07-2007-ECCC/TC-E39/5, 15 June 2009) .....	147, 148
<i>Decision on Request to Recall Civil Party TCCP-187 for Review of Procedure Concerning Civil Parties’ Statements of Suffering and Related Motions and Responses (E240, E240/1, E250/1, E267, E267/1 and E267/2 (Case File No 002/19-09-2007/ ECCC/TC, 2 May 2013) .....</i>	165, 225, 226, 228, 233
<i>Decision on Severance of Case 002 Following Supreme Court Chamber Decision of 8 February 2013</i> Trial Chamber (Case File No. 002/19-09-2007-ECCC/TC, 26 April 2013).....	129, 130
<i>Decision on the Co-Prosecutor’s Immediate Appeal of the Trial Chamber’s Decision Concerning the Scope of trial in Case 002/01 Supreme Court Chamber (Case File No 002/19-09-2007- ECCC/SC 8 February 2013) .....</i>	130
<i>Decision on the Co-Prosecutor’s Request to Include Additional Crime Sites within the Scope of Trial in Case 002/01 (E163) and Deadline for submission of applicable law portion of Closing Briefs</i> Trial Chamber (Case File No 002/19-09-2007- ECCC/TC, 8 October 2012) .....	129, 224
<i>Kaing Guek Eav alias Duch, (Appeal Judgment)</i> Supreme Court Chamber (Case File No. 001/18-07-2007-ECCC/SC, 3 February 2012).....	129, 243
‘Memorandum from President Nil Nonn to All Parties (Case 002) on Information on (1) Key Document Presentation Hearings in Case 002/02 and (2) Hearings on Harm Suffered by the Civil Parties in Case 002/02 (ECCC/TC/E315/1, 17 December 2014) .....	236
<i>Nuon Chea and Khieu Samphân (Appeal Judgment)</i> Supreme Court Chamber (Case File No. 002/01, 002/19-09-2007-ECCC/SC 23 November 2016).....	130, 146, 234, 297
‘Order on Resuming the Judicial Investigation’, Office of the Co-Investigating Judges (CF003/07-09-2009-ECCC-OCIJ-D28, 2 December 2011) .....	154
<i>Transcripts of Trial Proceedings – Kaing Guek Eav ‘Duch’,</i> Trial Chamber (Case File No. 001/18-07-2007/TC, commencing 30 March 2009).....	180–181, 183–199, 212–233
<i>Transcripts of Trial Proceedings – Nuon Chea and Khieu Samphân – Case 002/01</i> Trial Chamber (Case File No. 002/19-09-2007-ECCC/TC, commencing 21 November 2011).....	225–227, 229–233, 279, 282, 284, 296
<i>Transcripts of Trial Proceedings – Nuon Chea and Khieu Samphân – Case 002/02</i> Trial Chamber (Case File No. 002/19-09-2007-ECCC/TC, commencing 8 January 2015).....	235–236



## SPECIAL COURT FOR SIERRA LEONE

<i>Prosecutor v. Charles Ghankay Taylor (Judgment)</i> Chamber II (Case No. SCSL-03-01-T, 18 May 2012) .....	88
<i>Prosecutor v. Brima (Appeal Judgment)</i> Appeals Chamber (Case No. SCSL-2004- 16-A, 22 February 2008) .....	247

## SPECIAL TRIBUNAL FOR LEBANON

<i>Prosecutor v. Ayash et al (Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging)</i> Appeals Chamber (Case No. STL-11-01, 16 February 2011) .....	90
---	----



# TABLE OF LEGISLATION

## INTERNATIONAL

<i>Agreement between the United Nations and the Royal Government of Cambodia Concerning the Prosecution under Cambodian Law of Crimes Committed during the Period of Democratic Kampuchea</i> , (signed 6 June 2003, ratified 19 October 2004).....	245
<i>Charter of the International Military Tribunal at Nuremburg – Annex to the Agreement for the Prosecution of the Major War Criminals of the European Axis</i> ('London Agreement') (8 August 1945) 82 UNTS 279 .....	50, 251
<i>1945 Charter of the United Nations</i> (adopted 26 June 1945) [1945] ATS 1.....	125
<i>Rome Statute of the International Criminal Court</i> (opened for signature 17 July 1998, 2187 UNTS 90 (entered into force 1 July 2002)).....	19, 69

## NATIONAL

### CAMBODIA

<i>Code of Judicial Ethics of the Extraordinary Chambers in the Courts of Cambodia</i> (5 September 2008).....	157
<i>Constitution of the Kingdom of Cambodia</i> (adopted 21 September 1993) .....	147
<i>Criminal Procedure Code of the Kingdom of Cambodia 2007</i> (adopted 6 August 2007).....	148, 160
<i>Decree Law No. 1. Establishment of the People's Revolutionary Tribunal at Phnom Penh to Try the Pol Pot-Ieng Sary Clique for the Crime of Genocide</i> (1979) .....	110
<i>Law on the Establishment of the Extraordinary Chambers in the Courts in Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea</i> , Reach Kram No. NS/RKM/0801/12 (2 January 2001) .....	124
<i>Law on the Establishment of the Extraordinary Chambers in the Courts in Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea with inclusion of Amendments as promulgated on 27 October 2004</i> (NS/RKM/1004/006 (27 October 2004)).....	125
<i>Law to Outlaw the Democratic Kampuchea Group Law</i> , Reach Kram No. 064 (15 July 1994) .....	118
<i>Extraordinary Chambers in the Courts of Cambodia, Internal Rules</i> (adopted 12 June 2007) .....	128, 144, 161
<i>Extraordinary Chambers in the Courts of Cambodia, Internal Rules</i> (Rev. 8) (adopted 3 August 2011).....	149, 152–153, 161, 163–169

## SIERRA LEONE

<i>Special Court Agreement (Ratification) Act 2002</i> Supplement to the Sierra Leone Gazette vol. CXXX. No. II, (7 March 2002).....	86
<i>Statute of the Special Court of Sierra Leone</i> (16 January 2002) 2178 UNTS 145 .....	86

## KOSOVO

<i>Kosovo Declaration of Independence 17 February 2008</i> (2008) 47 ILM 467.....	84
---	----

## TABLE OF TREATIES

<i>Agreements on a Comprehensive Settlement of the Cambodian Conflict signed in Paris, 23 October 1991, comprising the Final Act of the Paris Conference; the Agreement Concerning the Sovereignty, Independence, Territorial Integrity and Inviolability, Neutrality and National Unity of Cambodia; and the Declaration on the Rehabilitation and Construction of Cambodia</i> (23 October 1991) (1992) 31 ILM 174. ....	114
<i>Consolidated Version of the Treaty on the Functioning of the Exercise of the European Union, [2008] OJ C115/47. ....</i>	27
<i>Convention against Torture and Other Cruel, In-humane or Degrading Treatment or Punishment, opened for signature 4 February 1985, (1985) 23 ILM 1028 (entered into force 26 June 1987). ....</i>	57
<i>Convention on the Prevention and Punishment of the Crime of Genocide, opened for signature 9 December 1948, 78 UNTS 277 (entered into force 12 January 1951). ....</i>	22, 55
<i>Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, opened for signature 14 May 1954–31 December 1954, 249 UNTS 240 (entered into force 7 August 1956). ....</i>	140
<i>International Covenant on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976). ....</i>	8, 32
<i>Peace Agreement between the Government of the Republic of Sierra Leone and the Revolutionary United Front of Sierra Leone, (7 July 1999) UN Doc. S/1999/777, Annex. (Lome Accord). ....</i>	86
<i>Vienna Convention on Diplomatic Relations, opened for signature 18 April 1961 (1961) 500 UNTS 95 (entered into force 24 April 1964). ....</i>	140
<i>Vienna Convention on the Law of Treaties, opened for signature 23 May 1969, 1155 UNTS 331 (entered into force 27 January 1980). ....</i>	141, 246



## LIST OF ABBREVIATIONS

CGDK	Coalition Government of Democratic Kampuchea
CPK	Communist Party of Kampuchea
CPP	Cambodian People's Party
ECCC	Extraordinary Chambers in the Courts of Cambodia
FUNCINPEC	<i>Front uni national pour un Cambodge Indépendant, Neutre, Pacifique et Coopératif</i>
ICC	International Criminal Court
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia
ILM	International Legal Materials
IMT	International Military Tribunal
KPLNF	Khmer People's National Liberation Front
KPRP	Khmer People's Revolutionary Party
PDK	Party of Democratic Kampuchea
PRK	People's Republic of Kampuchea
PRT	The People's Revolutionary Tribunal
SCC	Supreme Court Chamber
SCSL	Special Court for Sierra Leone
SOC	State of Cambodia
STL	Special Tribunal for Lebanon
UNGA	United Nations General Assembly
UNSC	United Nations Security Council
UNTS	United Nations Treaty Series
UNTAC	United Nations Transitional Administration in Cambodia
UNMIK	United Nations Transitional Interim Administration in Kosovo
UNTAET	United Nations Transitional Administration in East Timor
VCLT	Vienna Convention on the Law of Treaties

