

## FOREWORD

This book provides a hugely important contribution to a complex and vital area of international criminal law. For the courts and tribunals which are charged with the responsibility of trying the most serious cases in the criminal calendar, there can be few subjects of greater concern than the approach that should be taken when dealing with the alleged responsibility of those who are seemingly 'in control' when the worst international crimes are committed. The author, who brings to bear his distinguished academic and practical experience in this area, has subjected the issue to painstaking research and, in the event, he has provided with his personal views a penetrating analysis of the extensive materials which relate to this subject, as found in the academic writing and the leading jurisprudence.

The issue of practical and serial concern is, very often, not whether crimes of real magnitude have been committed by someone, but rather whether blame can properly be attached to those who, although at some distance from the event, were seemingly responsible for strategy and controlling the immediate perpetrators. The evidence-trail leading to the General at his headquarters and the politician in his office is often imperfect: identifying what a figure in authority did or did not know, or did or did not order, is frequently hard to establish for the prosecution and the defence.

Given the current trend of concentrating the limited time and resources that are available for these often lengthy and expensive trials on those believed to be the most culpable perpetrators, this becomes a subject of heightened importance. For a court to arrive at a valid judgment on the true position in these circumstances, evidence of the crimes themselves can, almost perversely, become of lesser importance. Instead, different kinds of evidence—often at some remove from the core events—take on a high degree of significance, such as meetings, telephone calls, letters and the movement of funds. This emphasis can have a critical effect on the content of trials and their focus, and to the public and the victims it may lead to a sense that the court has lost sight of the true nature of what happened.

To meet at least the legal aspect of these dilemmas and difficulties, international criminal law has adopted some necessary principles so as to address the role of these particular co-perpetrators, for instance those of 'joint criminal enterprise' (or the 'common purpose doctrine') and 'control of crime'. However, for prosecutors much of the debate has revolved around the need to find safe mechanisms that, within a juridical setting, will reflect the true role of senior political and military leaders, who often are not in the 'lower' position (as they are often understood) of accessories or aiders and abettors. The goal, therefore, has been to enable the court to address the 'leader's' true position—that of an indirect participant who is also a principal.

*Foreword*

This book provides the practitioner with fascinating and highly useful historical, national and international insights into how these problems have been addressed and how the law has emerged in this area. The developments are traced with skill, and although there is for the most understandable of reasons a strong focus on the jurisprudence of the ad hoc tribunals, academic writing and the important contributions by national systems are nevertheless generously included. In the event, a text has been produced that should be in the Chambers of every judge and in the office of every lawyer and academic who practices or writes in this field.

In short, I suspect this will rapidly become the *locus classicus* on this subject.

Judge Sir Adrian Fulford  
Den Haag  
24 April 2008

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## ACKNOWLEDGEMENTS

‘all men make mistakes, but a good man yields when he knows his course is wrong, and repairs the evil. The only crime is pride.’

Sophocles

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The views expressed herein are those of the author alone and do not necessarily reflect the views of the ICC, the ICTY, the United Nations or the Spanish Government.

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