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Introduction

1. The growing relevance of prosecution in international law

Confronting serious human abuses by means of prosecution has been an issue of international law throughout the last century. Starting with the Nuremberg Trials and those for the Far East, individuals have been held accountable for the most serious atrocities including crimes against humanity committed in the Second World War by multilateral bodies.[1] The Convention on the Prevention and Punishment of the Crime of Genocide of 1948 provided for criminal prosecution at both the international and domestic level.[2] However, in the following decades the international community failed to establish an international criminal tribunal. Since the 1990s there has been a renaissance of the idea of international prosecution: the *ad hoc* Criminal Tribunals for the Former Yugoslavia and Rwanda,[3] as well as the Rome Statute of the International Criminal Court,[4] are prominent examples of this trend. They are based on the conviction that those responsible for the most serious crimes, including crimes against humanity and genocide, should not go unpunished. The growing institutional framework together with the developing body of international criminal law illustrates the increasing relevance of criminal

[1] United States, France, Great Britain, Soviet Union, Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, 8 August 1945, Am. J. Int'l L. 1945, Suppl., 257. For the historical development of international criminal law, see Gary Jonathan Bass, Stay the Hand of Vengeance—The Politics of War Crimes Tribunals (2000).

[2] Article VI of the Genocide Convention provides that perpetrators 'shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction'. Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948, 78 U.N.T.S. 227 [hereinafter Genocide Convention].

[3] The International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 was established by S.C. Res. 827, U.N. Doc. S/RES/827 (25 May 1993) on the basis of Chapter VII of the UN Charter, and the International Criminal Tribunal for Rwanda was established by S.C. Res. 955, U.N. Doc. S/RES/955 (8 November 1994).

[4] United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Rome, Italy, 15 June–17 July 1998, *Rome Statute of the International Criminal Court*, U.N. Doc. A/CONF.183/9 (17 July 1998), reprinted in 37 I.L.M. 999 (1998) [hereinafter Rome Statute].

accountability in international law. It has even been described as the emerging concept of global justice.[5]

When considering this development it is important to note that the laws of armed conflict served as the precursor to the prosecution of serious human rights violations. The idea of criminal punishment for grave violations of international law originally developed in the area of international humanitarian law.[6] At the beginning of the twentieth century the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field of 1906[7] and the Tenth Hague Convention for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention of 1907[8] already required punishment for specific offences. This was followed, in the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field of 1929, by a comprehensive duty on the High Contracting Parties to criminalize violations of the Convention.[9] The crimes prosecuted by the Allies in Nuremberg, i.e. crimes against peace, crimes against humanity, and war crimes, were all linked to the Second World War. In the post-war period the concept of criminal punishment most prominently entered the four Geneva Conventions of 1949. The Conventions set up the grave breaches regime for the protection of particularly vulnerable persons in international armed conflicts:[10] they provide for a comprehensive duty

[5] Andreas O'Shea, Amnesty for Crime in International Law and Practice 320 (2002).

[6] For the historical development which goes back to the trial of Peter von Hagenbach see Edoardo Greppi, *The Evolution of Individual Criminal Responsibility under International Law*, 835 International Review of the Red Cross 531, 533 (1999).

[7] Article 28 Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field, 6 July 1906, 11 L.N.T.S. 440: 'In the event of their military penal laws being insufficient, the signatory governments also engage to take, or to recommend to their legislatures, the necessary measures to repress, in time of war, individual acts of robbery and ill treatment of the sick and wounded of the armies, as well as to punish, usurpations of military insignia, the wrongful use of the flag and brassard of the Red Cross by military persons or private individuals not protected by the present convention. They will communicate to each other through the Swiss Federal Council the measures taken with a view to such repression, no later than five years from the ratification of the present convention.'

[8] Article 21 Hague Convention X—Adaptation to Maritime War of the Principles of the Geneva Convention, 18 October 1907, 15 L.N.T.S. 340: 'The Signatory Powers likewise undertake to enact or to propose to their legislatures, if their criminal laws are inadequate, the measures necessary for checking in time of war individual acts of pillage and ill-treatment in respect to the sick and wounded in the fleet, as well as for punishing, as an unjustifiable adoption of naval or military marks, the unauthorized use of the distinctive marks mentioned in Article 5 by vessels not protected by the present Convention.'

[9] Article 29 Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field, 27 July 1929, 118 L.N.T.S. 303 provides: 'The Governments of the High Contracting Parties shall also propose to their legislatures should their penal laws be inadequate, the necessary measures for the repression in time of war of any act contrary to the provisions of the present Convention. They shall communicate to one another, through the Swiss Federal Council, the provisions relative to such repression not later than five years from the ratification of the present Convention.' However, no such obligation existed under the Convention relative to the treatment of prisoners of war.

[10] Article 50 Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 12 August 1949, 75 U.N.T.S. 31; Art. 51 Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 12 August 1949, 75 U.N.T.S. 85; Art. 130 Geneva Convention relative to the Treatment of Prisoners of War, 12 August 1949, 75 U.N.T.S. 135; Art. 147 Geneva Convention relative to the Protection of Civilian Persons in Time of War, 12 August 1949, 75 U.N.T.S. 287. For a definition of these offences

to criminalize and punish particularly serious violations identified in the Conventions.[11]

While international criminal law originated primarily in the realm of the law of armed conflict, human rights law nowadays plays an increasing role. This is due to numerous crimes being committed outside the context of armed conflict and therefore beyond the reach of international humanitarian law. As a consequence a nexus between armed conflict and the crime of genocide and crimes against humanity is no longer required. Since the current field of international criminal law is still fragmented and covers only a limited number of crimes, human rights law has recently attracted growing attention.[12] Efforts have been made to refer to this body of law in order not only to interpret existing crimes but also to extend the catalogue of international crimes.[13] The international protection of human rights is occasionally viewed as a legal basis for filling the gaps which still exist in international criminal law and also to complement international criminal law.[14] This not only encompasses torture and genocide—for which the respective conventions already provide criminal sanctions—but serious human rights violations in general. Human rights law is now also used to enhance the enforcement of international criminal law at the domestic level.[15] Since international criminal tribunals

see Rüdiger Wolfrum, *Enforcement of International Humanitarian Law, in* The Handbook of Humanitarian Law in Armed Conflicts 517, 532–540 (Dieter Fleck ed., 1995). See also the case law of the Yugoslavia Tribunal; *e.g.* Prosecutor v. Mucić et al., Case No. IT-96-21, Judgment (16 November 1998), paras 419–583, Prosecutor v. Tihomir Blaškić, Case No. IT-95-14, Judgment (3 March 2000), paras 151–158.

[11] Similarly, the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 1954 provides for the prosecution of breaches of the Convention. Art. 28 of the Convention reads: 'The High Contracting Parties undertake to take, within the framework of their ordinary criminal jurisdiction, all necessary steps to prosecute and impose penal or disciplinary sanctions upon those persons, of whatever nationality, who commit or order to be committed a breach of the present Convention' Convention for the Protection of Cultural Property in the Event of Armed Conflict, 14 May 1954, 249 U.N.T.S. 240.

[12] Pursuant to art. 5 para. 1 of the Rome Statute '[t]he jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole'. The crime of genocide, crimes against humanity, war crimes, and the crime of aggression as defined by the Statute are crimes within the jurisdiction of the Court. The jurisdiction of the ICTY is limited to grave breaches of the Geneva Conventions of 1949 (Art. 2 'Statute of the International Tribunal for the Former Yugoslavia' S.C. Res. 827, U.N. Doc. S/RES/827 (25 May 1993)), violations of the laws or customs of war (art. 3), genocide (art. 4) and crimes against humanity (art. 5).

[13] The ICTY has regularly referred to the Torture Convention in elaborating its jurisprudence on torture. An example for extending the scope of international criminal law by way of reference to human rights law is the incorporation of enforced disappearances into the Rome Statute (art. 7(1)(i)).

[14] *See e.g.* M. Cherif Bassiouni & Edward M. Wise, Aut Dedere Aut Judicare: The Duty to Extradite or Prosecute in International Law 24 (1995); M. Cherif Bassiouni, Crimes Against Humanity in International Criminal Law 499 (1st edn, 1992); Mirko Bagaric & John Morss, *In Search of Coherent Jurisprudence for International Criminal law: Correlating Universal Human Responsibilities with Universal Human Rights*, 29 Suffolk Transnat'l L. Rev. 157–206 (2005–2006).

[15] *See e.g.* Trujillo Oroza v. Bolivia, Reparations, 2002 Inter-Am. Ct. H.R. (ser. C) No. 92, para. 106 (27 February 2002); Human Rights Committee, *General Comment No. 31: The Nature of the*

can only supplement and not replace national prosecution, domestic criminal proceedings remain pivotal for the effective implementation of international criminal law.[16] The question whether there is a comprehensive duty on States to criminalize serious human rights violations has therefore become particularly relevant.

In view of this development and of the broad spectrum of academic writing on international criminal law,[17] it is currently time to consider criminal prosecution from a human rights angle and to evaluate whether international human rights law provides an adequate basis for the extension of criminal obligations. International and regional human rights treaties are therefore the focus of this research.[18] This text engages the interface between international criminal law and international human rights through a consideration of international standards relevant for the prosecution of serious violations of civil and political rights. By illustrating recent judicial developments in international human rights, the text is intended to supplement and bring together the study of these bodies of international law.[19]

General Legal Obligation Imposed on States Parties to the Covenant (Art. 2), U.N. Doc. CCPR/C/21/Rev.1/Add.13, para. 18 (26 May 2004).

[16] Rüdiger Wolfrum, *The Decentralized Prosecution of International Offences Through National Courts, in* War Crimes in International Law 233, 235 et seq. (Yoram Dinstein & Mala Tabory eds, 1996). International prosecution by the International Criminal Court is meant only to complement domestic procedures. Art. 17 of the Rome Statute. For the relationship between the ICC and domestic procedures see Markus Benzing, *The Complementarity Regime of the International Criminal Court: International Criminal Justice between State Sovereignty and the Fight against Impunity*, 7 Max Planck UNYB 591 (2003).

[17] *See e.g.* The Oxford Companion to International Criminal Justice (Antonio Cassese et al. eds, forthcoming 2009); Antonio Cassese, International Criminal Law (2nd edn, 2008); Kriangsak Kittichaisaree, International Criminal Law (2001); Steven R. Ratner & Jason S. Abrams, Accountability for Human Rights Atrocities in International Law (2nd edn, 2001); Gerhard Werle, Principles of International Criminal Law (2005); R. Cryer, H. Friman, D. Robinson, & E. Wilmshurst, An Introduction to International Criminal Law and Procedure (2007); Ilias Bantekas & Susan Nash, International Criminal Law (3rd edn, 2007); Claire de Than & Edwin Shorts, International Criminal Law and Human Rights (2003); From Human Rights to International Criminal Law (Emmanuel Decaux et al. eds, 2007); William A. Schabas, The UN International Criminal Tribunals: The Former Yugoslavia, Rwanda and Sierra Leone (2006); William A. Schabas, An introduction to the International Criminal Court (3rd edn, 2007); Geert-Jan Alexander Knoops, An Introduction to the Law of International Criminal Tribunals: A Comparative Study (2003); Internationalized Criminal Courts: Sierra Leone, East Timor, Kosovo, and Cambodia (Cesare P.R. Romano, André Nollkaemper, & Jann K. Kleffner eds, 2004); Bruce Broomhall, International Justice and the International Criminal Court: Between Sovereignty and the Rule of Law (2003).

[18] This is why the conventions penalizing terrorist acts which provide for the concept of *aut dedere aut judicare* are not the subject here of analysis. For this issue see M. Cherif Bassiouni & Edward M. Wise, Aut Dedere Aut Judicare: The Duty to Extradite or Prosecute in International Law 18 (1995).

[19] *See e.g.* Christian Tomuschat, Human Rights (2nd edn, 2008); Henry J. Steiner, Philip Alston, & Ryan Goodman, International Human Rights in Context (3rd edn, 2008); Dinah Shelton, Remedies in International Human Rights Law (2nd edn, 2005); Access to Justice (Francesco Francioni ed., 2007). For literature on international criminal law see note 20. For some cutting cross-issues see Judges, Transition, and Human Rights (John Morison, Kieran McEvoy, & Gordon Anthony eds, 2007); Christine Bell, Peace Agreements and Human Rights (2000).

While there is a wealth of literature on the right to a fair trial for the accused,[20] the focus of this text is on the opposing question—whether there is a duty to prosecute serious human rights violations. The objective is to present a concise overview of the present scope of obligations regarding accountability for human rights violations and to evaluate critically the role that prosecution plays under human rights law in general. The text ultimately seeks to clarify to what extent international human rights law is able to complement international criminal law. It not only concerns the potential but also the necessary limits of this process.

Among the questions addressed are: which human rights violations require criminal prosecution? What are the standards set by human rights law for the criminalization, investigation, prosecution, and punishment of human rights abuses? Why are these standards essential for the protection of human rights? Under what circumstances could they be compromised?

By elaborating on the essential elements for confronting serious human rights abuses, the text also seeks to influence the future of post-conflict justice. In such situations it is often argued that criminal punishment of the crimes committed during a conflict threatens future peace and reconciliation. This issue, though it has been on the international agenda for several decades, is far from being settled. The question how to deal with post-conflict justice under international law is a continuing theme throughout the text. Not only is it intended to give guidance to States but also to the international community as a whole. This is of practical importance for the peacekeeping efforts of the United Nations which need to accommodate international human rights standards. What is advocated is the development of a strategic framework to take due account of the current international legal standards concerning the prosecution of serious human rights violations.

2. Impunity, amnesties, and flawed criminal proceedings

Whether human rights law provides for a duty to prosecute serious human rights violations is relevant in practice when considering the large-scale impunity which can be found throughout the world. Such impunity has many faces; from disorganized *de facto* incidents to the systematic granting of immunity.[21] It is

[20] Stefan Trechsel, Human Rights in Criminal Proceedings (2005); Sarah J. Summers, Fair Trials: The European Criminal Procedural Tradition and the European Court of Human Rights (2007); Andrew Ashworth, Human Rights, Serious Crime and Criminal Procedure (2002); Salvatore Zappalà, Human Rights in International Criminal Proceedings (2003); Ben Emmerson, Andrew Ashworth, & Alison Macdonald, Human Rights and Criminal Justice (2nd edn, 2007); Stephen Livingstone & Jonathan Doak, Human Rights Standards and Criminal Justice (2000); The Criminal Process and Human Rights: Toward a European Consciousness (Mireille Delmas-Marty & Mark A. Summers eds, 1995).

[21] For a definition of this term, see U.N. Commission on Human Rights *Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity*, 6, U.N. Doc.

also relevant with respect to centrally proscribed amnesties. The purpose of this text is not to give a comprehensive overview of these different forms of impunity but to clarify the legal parameters set by human rights law. It is possible here only to give a cursory sketch of the factual problems and for more detailed consideration the reader is referred to the wealth of literature given elsewhere on amnesties and truth commissions.[22]

The last decades of the twentieth century witnessed a broad range of amnesties around the world. Starting in the late 1970s, several governments in the Americas granted amnesties to the military, police, and security forces. The reasons for granting amnesty are manifold: for example, authoritarian regimes are inclined to provide for self-amnesties in order to escape future punishment. In such instances amnesty is used to conceal past crimes. Sometimes an amnesty is proclaimed for offences committed by political opponents in order to neutralize the opposition.[23] In other cases amnesties are considered to be a valuable method of transition from a situation of civil war to one of democracy. The renunciation of criminal prosecution has therefore occasionally been used as a bargaining chip for peace and security.[24] The UN-brokered peace agreement for Haiti of 1993, for example, provided for an amnesty in order to end the Cedras regime.[25]

There are also conditional forms of amnesty where an individual amnesty is granted in return for complete disclosure of crimes committed. An example of this is the South African Truth and Reconciliation Commission.[26] The purpose of

E/CN.4/2005/102/Add.1 (8 February 2005) (*prepared by* Diane Orentlicher). For a comprehensive account of different amnesties Louise Mallinder, Amnesty, Human Rights and Political Transitions: Bridging the Peace and Justice Divide (2008). For the role of amnesties in Europe see La Clémence Saisie par le Droit: Amnistie, Prescription et Grace en Droit International et Comparé (Hélène Ruiz Fabri, Gabriele Della Morte, Elisabeth Lambert Abdelgawad, & Kathia Martin Chenut eds, 2007).

[22] For a detailed analysis of different amnesty regimes *see e.g.* Naomi Roht-Arriaza, Impunity and Human Rights in International Law and Practice, 73–280 (1995); Frank Achim Hammel, Innerstaatliche Amnestien: Grundlagen und Grenzen aufgrund des internationalen Rechts (1993); Angela Schlunck, Amnesty versus Accountability: Third Party Intervention Dealing With Gross Human Rights Violations in Internal and International Conflicts (2000); Andreas O'Shea, Amnesty for Crime in International Law and Practice 172–176 (2002); Transitional Justice in the Twenty-First Century; Beyond Truth versus Justice (Naomi Roht-Arriaza & Javier Mariezcurrena eds, 2006); Mark Freeman, Truth Commissions and Procedural Fairness (2006).

[23] Louis Joinet, Special Rapporteur, *Study on amnesty laws and their role in the safeguard and promotion of human rights*, U.N. Commission on Human Rights, paras 33–37, U.N. Doc. E/CN.4/Sub.2/1985/16 (1985). Provides detailed analysis of the various rationals for providing an amnesty.

[24] For this issue see Anon., *Human Rights in Peace Negotiations*, 18 Hum. Rts. Q. 249 (1996).

[25] Governors Island Agreement, *see* The Secretary-General, *Report of the Secretary-General on the Situation of Democracy and Human Rights in Haiti*, U.N. Doc. A/47/975-S/26063 (12 July 1993). For a comprehensive analysis of different peace agreements see Christine Bell, Peace Agreements and Human Rights (2000).

[26] The Promotion of National Unity and Reconciliation required that the crimes must be proportional to the ends sought and deemed to be political acts. Promotion of National Unity and Reconciliation Act 34 of 1995. *See also* The Provocations of Amnesty, Memory, Justice and

such mechanisms is to enable a society which has been torn apart during a prolonged period of civil unrest to come to terms with its past and to enable a smooth transition to peace and democracy. Investigation and disclosure of past abuses are used as an alternative to prosecution in order to satisfy the victims' interests and the quest for some form of accountability while, at the same time, attempting to achieve peace in society by the decision not to prosecute. Not only is it necessary to question whether these reasons make sense—an issue which has been extensively dealt with in the literature[27]—but also whether such models comply with international human rights standards. The answer to this depends to a large extent on whether prosecution of serious human rights violations is an indispensable element of human rights protection; a matter which this text seeks to evaluate.

Aside from post-conflict situations, the question of mandatory prosecution of serious human rights violations increasingly occurs outside the area of armed conflict where there is no centrally prescribed impunity. There are a growing number of cases before the international and regional human rights institutions concerned with insufficient criminal proceedings at the national level. Victims of serious human rights violations complain of deficiencies in the prosecution of serious human rights violations, such as murder, torture, and serious bodily harm. The *'Street Children' Case* before the Inter-American Court of Human Rights is a prominent but sad example of such cases in Latin-America.[28] The European Court of Human Rights since the late 1990s has also had to deal with similar cases from Turkey, Bulgaria, and Russia (Chechnyan cases).[29] More recently deficiencies have also been claimed with respect to criminal proceedings in west European States.[30] Criminal law and criminal procedure at the national level are increasingly scrutinized in order to determine whether they provide for an effective protection in cases of serious human rights abuses. It is no longer an issue exclusively of the Inter-American Human Rights system but one which requires the attention of every international human rights institution and all domestic jurisdictions.

Impunity (Charles Villa Vicencio & Erik Doxtader eds, 2003); Kader Asmal, *Truth, Reconciliation and Justice: The South African Experience in Perspective*, 63 Mod. L. Rev. 1 (2000); Gerhard Werle, *Without Truth, No Reconciliation, The South African Rechtsstaat and the Apartheid Past*, 29 Verfassung und Recht in Übersee 58 (1996) (F.R.G.). For further reflections on Truth Commissions, *see e.g.* Stephan Landsman, *Alternative Responses to Serious Human Rights Abuses: Of Prosecution and Truth Commissions*, 59 Law & Contemp. Probs. 81 (Autumn 1996); Jonathan D. Tepperman, *Truth and Consequences*, 81 Foreign Aff. 128 (March/April 2002); Antje Pedain, *Was Amnesty a Lottery? An Empirical Study of the Decisions of the Truth and Reconciliation Commission's Committee on Amnesty*, 121 S. African L.J. 785 (2004); James L. Gibson, *Truth, Reconciliation, and the Creation of a Human Rights Culture in South Africa*, 38 Law & Society Rev. 5 (2004).

[27] *See e.g.* Atrocities and International Accountability: Beyond Transitional Justice (Edel Hughes, William A. Schabas, & Ramesh Thakur eds, 2007); Transitional Justice in the Twenty-First Century; Beyond Truth versus Justice (Naomi Roht-Arriaza & Javier Mariezcurrena eds, 2006); Christine Bell, Peace Agreements and Human Rights (2000).

[28] Villagran Morales et al. v. Guatemala (the 'Street Children' Case), 1999 Inter-Am. Ct. H.R. (ser. C) No. 63 (19 November 1999).

[29] *See below* Chapter 4, section 3.

[30] VO v. France, 2004-VIII Eur. Ct. H.R. 67; Case of Ramsahai and Others v. The Netherlands, App. No. 52391/99, Eur. Ct. H.R., Judgment of 15 May 2007.

Current cases not only concern the lack of punishment but also the lack of criminalization, enforcement mechanisms, and the deficits of criminal proceedings. While initially the human rights institutions were concerned with large-scale impunity there is a growing body of cases, especially under the European Human Rights system, dealing with inadequacies in criminal legislation and in the conduct of criminal proceedings in individual cases. Criminal law and criminal procedure at the national level are increasingly scrutinized in order to determine whether they provide effective protection in case of human rights abuses. New case law is specifying standards having far-reaching implications for the domestic criminal order. While human rights law, with the right to a fair trial, has traditionally been considered to have a restrictive impact on State power with respect to criminal law and procedure, it is progressively used now to extend the reach of criminal law in order to ensure that perpetrators are held accountable. This brings a radical new dimension to human rights law.

3. Methodology and course of analysis

With the growing body of international decisions on these matters there is a need for an integrated analysis. This text reviews international human rights jurisprudence and presents a systematic treatment of current doctrine. The purpose is not to advocate criminalization generally but to take stock of existing standards and to consider whether and to what extent mandatory prosecution is a means of human rights protection. Accordingly, the text does not start from a normative approach but from a *de lege lata* analysis.

The first part (Chapters 2–4) considers prosecution as an unwritten obligation of human rights protection. After examining the International Covenant on Civil and Political Rights as a universal instrument, the analysis turns to the Inter-American system which early on considered a duty to punish serious human rights violations. Thirdly, the most recent judicial developments under the European Convention of Human Rights are elaborated. The main purpose of this part is to explain how the competent courts and treaty bodies have developed their respective doctrine. In order to show differences and similarities it is necessary to consider them individually, even though some arguments are recurring. We will consider whether and why there is a treaty obligation to prosecute and punish serious human rights violations in general even though such a duty is explicitly provided for only in conventions dealing with specific violations (Chapter 5).

A detailed representation of the relevant provisions and the applicable jurisprudence are provided in order to guide the reader through the wealth of cases. As a comprehensive tool of reference, this will be of interest for those working in this field of law who are confronted with a large number of cases currently pending before international and regional institutions. The systematic overview of the decisions will seek to give guidance and to ensure coherence in

future adjudication. The structure of the chapters on the International Covenant on Civil and Political Rights, the American and the European Convention of Human Rights are designed to allow comparison of universal and regional human rights jurisprudence. Some readers may find the concluding remarks of those chapters to be of assistance in giving a general outline rather than a detailed analysis of those subject areas.

Throughout the text the focus will be on why prosecution is considered a necessary element of human rights protection. The detailed analysis of relevant decisions seeks to examine and elaborate on the underlying rationale for the claimed duty to prosecute serious human rights violations. This reveals that different rationales have been applied at different times by the relevant human rights institutions. These differences in legal reasoning are not of purely academic concern. It will be demonstrated that the outcome of controversial cases depends largely on the applied rationale. The chronological presentation of the case law in each chapter helps to illustrate this point and shows that over the years amnesties have been evaluated differently, largely due to the fact that prosecution and punishment have been sought for different reasons.

Unfortunately, jurisprudence varies and so far does not provide for a consistent approach. The search for an adequate legal doctrine therefore continues. In order to determine the future role of international human rights law in the administration of justice it is necessary to take care in framing the duty to prosecute in legal terms. To guide this undertaking, the text—following the survey of the relevant jurisprudence—departs from its descriptive orientation and seeks to develop a solid conceptual framework on the basis of the relevant provisions. Chapter 6, therefore, compares and evaluates the different legal rationales for the obligation to prosecute serious human rights violations and makes suggestions for further judicial development. It seeks to guide future conceptualization by focusing on the specific role prosecution can play under human rights law. Differing from those writings concerned with the purposes of punishment from a criminal point of view, it asks which of those purposes is relevant for the protection of human rights. The chapter concludes with a summary intended for those readers interested in an overview of the subject area.

Chapter 7 turns to the question whether customary international law provides for a State duty to prosecute serious human rights violations. Reference is made to international criminal law as well as to the emerging concept of State responsibility for human rights violations. Recent developments are highlighted.

Since the entire study is evidence of a growing convergence of human rights and international criminal law the concluding remarks are devoted to this rising trend in international law. Chapter 8 evaluates this development by considering the role human rights law should play in the emerging concept of global justice. The book concludes with a caveat, not to assume readily an outright obligation to punish human rights violations and also to be aware of the reasons given for the call for punishment. Human rights law is not about retribution and it should not be used

to extend the scope of international criminal law without a firm legal basis. What may at first sight seem to be a lacuna in human rights law, namely the absence of an explicit obligation to prosecute all serious human rights violations, in a careful analysis proves to be necessary in order to deal adequately with situations requiring specific answers.