

Contents

Part I Introduction

1	Methodological Framework and Research Questions	3
1.1	Motivation and Objective	4
1.2	Field of Application	8
1.3	Structure, Methodology and Research Questions	10
	References	13
2	Preliminary Observations on the Systems of Enforcement	15
2.1	The Vertical System of Enforcement: A Useful Frame of Reference	16
2.2	The Horizontal System of Enforcement: From a ' <i>Ius Prosequi</i> ' to 'Mandatory Prosecutions'?	23
	References	25

Part II The Characterisation and Prosecution of Core Crimes: Some Underlying Assumptions

3	Multi-level Prosecutions of Serious Crimes of Concern to the International Community	31
	References	37
4	Why Do We Need to Understand the Concept of 'Core Crimes'?	41
4.1	The Salient Features of Core Crimes	43
4.2	Why Are Core Crimes the Most Serious Crimes of Concern to the International Community?	46
	References	56
5	What Is Required to Intrude into the Sovereignty of a Defaulting State in Order to Investigate and Prosecute Core Crimes?	59
5.1	The Principles of Human Security and International Harm	61

5.2	Why Do Group (Collective) Crimes Breach Human Security and Why Are They so Harmful?	66
5.3	Interventions Designed to Prevent and Punish Core Crimes by Prosecuting Core Crimes	72
5.4	The Conceptual Genesis of the Responsibility to Protect	73
5.5	The Transformation of the Concept of the Responsibility to Protect into a Legal Principle	76
	References	82
6	The Overarching Contextual (Juridical) Elements	89
6.1	Genocide	91
6.2	Crimes Against Humanity	93
6.3	War Crimes	101
6.4	Aggression	104
	References	106
7	The Juridical Consequences of Core Crimes: Individual Criminal Liability and State Aggravated Responsibility	111
	References	116
8	Detecting the Determining and Distinguishing Factors	117
8.1	Core Crimes Versus Transnational Organized Crimes	118
8.2	Core Crimes Versus Domestic Crimes	131
8.3	Core Crimes Versus International Crimes	133
8.4	Concluding Remarks	138
	References	139

Part III The Vertical System of Enforcement

9	Salient Features of the Vertical System of Enforcement	147
9.1	The Meaning of Verticality	148
9.2	Distinguishable Models of the Vertical System of Enforcement	149
9.3	The Line of Demarcation Between a Preference and a Necessity	156
	References	160
10	The State Obligation to Cooperate under International Law	165
10.1	The Nature of the General Obligation of An ICC State Party to Cooperate	166
10.2	The Obligations of Non-State Parties under the United Nations Security Council Resolution Regime	175
10.3	The Consequences of a Breach of the State's Obligation to Cooperate	184
	References	201

11 Inherent Limitations of the Vertical System of Enforcement	209
11.1 Grounds for Refusal Emerging Directly from Admissibility Challenges	216
11.1.1 Genuine Willingness or Ability to Prosecute	218
11.1.2 <i>Ne Bis in Idem</i>	231
11.1.3 Postponement of the Execution of a Request for Surrender	249
11.2 Competing Requests and Conflicting Obligations	251
11.3 Specific Requirements under National Law	255
11.3.1 Abuse of Process	256
11.4 Diplomatic Privileges and Immunities	265
11.4.1 Immunities <i>Rationae Personae</i>	278
11.4.2 Immunities <i>Rationae Materiae</i>	289
11.5 The Rule of Speciality	296
References	298
12 The Ensuing ‘Jurisdictional Joint Venture’, A Division of Labour <i>Par Excellence</i>	311
References	314

Part IV The Horizontal System of Enforcement

13 <i>Aut Dedere Aut Judicare</i>	319
13.1 The Nature, Scope and Status of the <i>Aut Dedere Aut Judicare</i> Rule	321
13.2 The Execution of the <i>Aut Dedere Aut Judicare</i> Rule in Domestic Criminal Courts	351
13.3 Limitations of the <i>Aut Dedere Aut Judicare</i> Rule	367
13.4 Emerging Alternatives to the <i>Aut Dedere Aut Judicare Formulae</i>	370
13.5 The Fractional Re-characterisation of the <i>Aut Dedere Aut Judicare</i> Rule	380
References	389
14 The Reliance of the Horizontal System of Enforcement on the <i>Corpus Juris</i> Relating to Extradition	403
References	408
15 The Impact of Customary International Law and General Principles of Law on the Horizontal System of Enforcement	411
References	413
16 Pitfalls Within the Horizontal System of Enforcement	415
16.1 The Non-extradition of Nationals	428
16.2 The Military Offence Exemption	436

16.3	The Political Offence Exemption	437
16.4	The Double Criminality Rule	448
16.5	The Exclusion of the Cause of the Criminal Action by Reason of Amnesty	454
16.6	Plea Bargaining	465
16.7	Human Rights General Exceptions to Extraditions	467
16.7.1	The Right to a Fair Trial	470
16.7.2	The <i>Ne Bis in Idem</i> Rule	477
16.7.3	The Prohibition of Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment	493
16.7.4	Death Row and the Death Penalty	507
16.8	Diplomatic Privileges and Immunities	518
16.8.1	Immunities <i>Rationae Personae</i>	519
16.8.2	Immunities <i>Rationae Materiae</i>	522
	References	533
17	Concurrent State Obligations	551
	References	553
18	The Self-assumption of Jurisdiction: An Abuse of Process or a Necessary Evil?	555
	References	559
Part V Conclusion		
19	The Obligation of States to Prevent, Prosecute and Punish	
	Core Crimes	563
	References	577
20	The Development of Functional International Constitutionalism	581
	References	584
21	The Exercise of <i>Kompetenz-Kompetenz</i> in the Determination of Presumptive Jurisdiction	587
21.1	International Courts	589
21.2	Domestic Courts	592
	References	595
22	The Proliferation of Judicial Panels and Judicial Partnerships	597
	References	601
23	Concluding Observations and Final Remarks	603
	References	615
Table of Cases		619
Index		657