# TABLE OF CONTENTS

Acknowledgements ................................................................................. v

Introduction

Cédric Ryngaert .................................................................................. vii

COST .................................................................................................. xix

**PART I**

**MAKING INTERNATIONAL CRIMINAL TRIBUNALS WORK**

THE INTERNATIONAL MILITARY TRIBUNALS IN NUREMBERG AND TOKYO – Epoch-making and standard-setting, yet with different effectiveness

Erik André Andersen ........................................................................... 3

1. Historical Background – Early Examples ........................................... 4
2. The First World War – The Leipzig Cases ....................................... 5
3. The League of Nations ................................................................... 7
4. Nuremberg and Tokyo .................................................................... 7
5. The International Military Tribunal in Nuremberg ......................... 8
6. The International Military Tribunal in the Far East (Tokyo) .............. 15
7. Critique of the International Military Tribunals .............................. 19
8. The Significance of the International Military Tribunals ................. 21
9. The Effectiveness of the International Military Tribunals ............... 22

Literature ............................................................................................... 24
# THE BALANCED SCORECARD OF INTERNATIONAL CRIMINAL TRIBUNALS

**Mikaela Heikkilä** ................................. 27

- The Idea of Balanced Scorecards .................. 27
- The Vision and Strategy of the International Criminal Tribunals ....... 30
- The Stakeholder Perspective ....................... 32
- The Internal Process Perspective .................. 38
- Numeric Performance Indicators .................... 41
- Learning and Growth Perspective ................... 46
- Reflections on Effectiveness Evaluations Regarding the International Criminal Tribunals .................. 48

# SAFEGUARDING THE RIGHTS OF SUSPECTS AND ACCUSED PERSONS IN INTERNATIONAL CRIMINAL PROCEEDINGS

**Masha Fedorova, Sten Verhoeven and Jan Wouters** .................. 55

1. Introductory Remarks .................................. 55
   1.1. Purpose and Scope of this Contribution ........... 55
   1.2. The Question of Effectiveness .................... 56

2. Comparing Legal Frameworks .......................... 58
   2.1. Legal Frameworks of ICTY/ICTR and ICC ............ 58
       2.1.1. Presumption of innocence .................... 59
       2.1.2. Right to a fair and public trial ............. 61
       2.1.3. Other guarantees of fair trial ............... 62
   2.2. Applicability of Human Rights Standards to International Criminal Proceedings .............. 63

   3.1. Protection of Rights During Investigation ........ 66
   3.2. Rights of the Defence ............................ 70
   3.3. Disclosure Obligations and the Right to Obtain Exculpatory Evidence .......................... 74

4. Providing for an Effective Remedy in Case of Violations of the Rights of the Suspect or the Accused ........... 77
   4.1. General Remarks on the Right to an Effective Remedy ........... 77
   4.2. Stay of Proceedings ................................ 80
   4.3. Right to Compensation .............................. 85

5. Conclusion ........................................... 89
# Table of Contents

## APPLES AND ORANGES? VICTIM PARTICIPATION APPROACHES AT THE ICC AND ECCC

**Brianne McGonigle** .............................................................. 91

1. Introduction ........................................................................... 91
2. Procedural Frameworks of the Courts in Relation to Victims ...... 93
   2.1. The International Criminal Court and Victim Participation .... 94
   2.2. The Extraordinary Chambers in the Court of Cambodia and Civil Party Participation ........................................ 95
3. Effective Approaches? ............................................................ 97
   3.1. Criteria for Determining Victim Status ................................ 97
   3.2. Modalities of Participation .............................................. 105
   3.3. Dual Status of Victim-Witnesses ...................................... 111
4. Conclusion ............................................................................. 114

## THE CREATION OF A GLOBAL CRIMINAL JUSTICE SYSTEM: THE EUROPEAN UNION AND THE INTERNATIONAL CRIMINAL COURT

**Jan Wouters** and **Sudeshna Basu** ........................................ 117

1. Introduction ........................................................................... 117
2. The EU and International Criminal Justice ............................. 118
   2.1. EU Guidelines: A Framework to Protect and Promote International Humanitarian/Criminal Law in Third Countries 119
   2.2. The EU’s Approach to International Criminal Justice Mechanisms: ICTR and ICTY ........................................ 120
3. The Need for an International Criminal Court ........................ 123
4. The Establishment of the ICC and Variables that Determine Its Effectiveness ......................................................... 125
5. A Global Criminal Justice System based on International Cooperation ............................................................... 128
6. The EU and the International Criminal Court .......................... 129
   6.1. Why Does the EU Support the ICC? .................................. 129
   6.2. EU-ICC Cooperation ..................................................... 132
   6.3. The EU and the Universality and Integrity of the Rome Statute ................................................................. 133
   6.4. Universality of the Rome Statute and the Case of the Czech Republic ............................................................. 135
6.5. The EU and the Independent and Effective Functioning of the International Criminal Court ............................... 136

6.5.1. European network of contact points in respects of persons responsible for genocide, crimes against humanity and war crimes ........................................ 138

6.5.2. EU Framework Decision on the European Arrest Warrant ................................................................. 138

6.5.3. EU Framework Decision on the investigation and prosecution of genocide, crimes against humanity and war crimes .................................................. 139

6.5.4. Summary .................................................................................................................................................. 140

Conclusion ....................................................................................................................................................... 140

PART II

FOSTERING PEACE, HUMAN RIGHTS AND SECURITY THROUGH COMPLEMENTARY JUDICIAL OR POLITICAL MECHANISMS

THE PRINCIPLE OF COMPLEMENTARITY: A MEANS OF ENSURING EFFECTIVE INTERNATIONAL CRIMINAL JUSTICE

Cédric Ryngaert .................................................................................................................................................. 145

1. The Positive Complementarity Principle: A Path Towards an Effective Administration of Justice .................................................... 148

2. Positive Complementarity in Practice .............................................................................................................. 153
   2.1. Democratic Republic of the Congo ............................................................................................................. 153
   2.2. Uganda .................................................................................................................................................... 155
   2.3. Central African Republic .......................................................................................................................... 159
   2.4. Darfur, Sudan ............................................................................................................................................ 161

3. Complementarity and Transitional Justice Efforts ......................................................................................... 164

4. Complementarity in Other International Criminal Tribunals ......................................................................... 167

5. Concluding Observations ............................................................................................................................ 170
## THE LEGACY OF THE ICTR IN RWANDA IN THE CONTEXT OF THE COMPLETION STRATEGY: THE IMPACT OF RULE 11BIS

**Inneke Onsea**  
173

**Introduction**  
173

1. The Life of the Tribunal and Implementation of the Completion Strategy through Rule 11bis  
1.1. International Justice Response Gradually Replaced by National Justice Response  
1.2. The Obstacles Faced in Implementing Rule 11bis  
1.3. Rwanda as One of the Only Options to Assist the Tribunal in the Completion of its Mandate  

2. The Contribution of Rule 11bis on Rwanda's Legal Framework and Practical Application of Rule 11bis vis-à-vis Rwanda  

3. The Way Forward  

4. Conclusion  

## THE ROLE OF AMNESTIES IN CONFLICT TRANSFORMATION

**Louise Mallinder**  
195

1. Introduction  
195

2. Growing Controversy on the Use of Amnesties  

3. Exploring Key Concepts  
3.1. Exploring the Nature of Conflict and Cultures of Violence  
3.2. Defining Amnesty and Its Objectives  

4. Amnesties in Ongoing Conflicts  

5. Amnesties during Peace Negotiations  

6. Amnesties in Conflict Transformation  
6.1. Transforming the Attitudes of Individuals  
6.2. Transforming Entrenched Cultures of Violence at the Communal Level  
6.3. National Transformation Projects  
6.4. Role of International Actors in Conflict Transformation  

7. Conclusions and Recommendations  

Intersentia XXV
Table of Contents

FINANCIAL COMPENSATION FOR VICTIMS OF INTERNATIONAL CRIMES AS A POLITICAL PROCESS

PETER MALCONTENT .............................................................. 237

Introduction ................................................................. 237
The Rise of Financial Compensation as a Remedy in International Law .... 241
The Legal Approach in Practice ............................................. 246
Financial Compensation as a Political Process ................................ 250
Concluding Observations ...................................................... 255

THE OTHER PATH TO PEACE: RESTITUTION AS A METHOD TO UNDO PAST INJUSTICE

ANTOINE BUYSE ................................................................. 257

1. Introduction ............................................................... 257
2. Restitution Efforts as Part and Parcel of Structural Peace ............... 258
3. Housing and Property Restitution in Practice: the Bosnian Case ...... 264
4. A Disappointing Start .................................................... 268
5. Trying a Different Approach ............................................ 271
6. Endgame ................................................................. 274
7. Conclusion .................................................................... 277