# Treatise on International Criminal Law

Volume I: Foundations and General Part

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Trial of Weis and Mundo, ONWCC, ERTWC, Am (1919) (8 16 17 17 17 17 17 17 17 17 17 17 17 17 17
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Prosecutor v Brima, Kamara and Kanu, No. SCSL-04-16-A, Appeals Chamber Judgment
(22 February 2008)
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on Head of State Immunity (23 October 2003)  Prosecutor v Charles Ghankay Taylor, No. SCSL-03-1-I-059, Decision on Immunity from
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Prosecutor v Charles Ghankay Taylor, No. SCSL-03-1-T, Sentencing Summary (26 April 2012)
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Israel AG of Israel v Eichmann, District Court Judgment, IsLR, 36 (1968), 18 (12 December 1961) 8, 103, 113-4, 118-9, 350, 360, 384, 428, 435	
AG of Israel v Eichmann, Supreme Court Judgment, IsLR, 36 (1968), 277 (29 May 1962) 113, 350, 376, 378, 409, 411	
ItalyKappler, Tribunale Militare di Roma (1 August 1996)	
Netherlands Prosecutor v Menten, Summary of Proceedings, ILR, 75 (1987)	3
New Zealand R v Brightwell 2 NZLR 435 (1995)	3
Peru Abimael Guzmán Reinoso et al., Sala Penal Nacional, Decision, expediente acumulado, No. 560-03  (13 October 2006)	7
Poland Amon Leoplod Goeth, Supreme National Tribunal of Poland (27-31 August and 2-4 September 1946)	7
Spain Scilingo, Judgment, Gil Gil, JICJ, 3 (2005), Audiencia Nacional	
United Kingdom  A (Children), Re [2000] 4 All ER 961	98 7: 5: 6:
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R v Howe et al. [1987] 1 All ER 771
R v Khan (1990) 2 All ER 783, CA
R v Loosely [2001] UKHL 53
R v Lowe [1973] QB 702, CA
R v Millard and Vernon. CLR, 6 (1987)
R v Pritchard (1836) 7 C & P 303 (173 Eng. Rep. 135)
R v Tyler 8 C & P 616 (1838)
R v Wilson EWCA Crim 1251 (2007)
R v Woolin 1 Cr App R (1999) 8, HL
Southwark LBC v Williams (1971) 2 All ER 175
United States Appellee v Calley, Appellant, Court of Military Appeals, CMR, 48 (1973/74) 21 December 1973)
Calley v Galloway, US District Court, M.D. Georgia, Columbus Division, FSupp, 382 (1974)
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Cox v Louisiana 379 U.S. 536 (1965)
Ex parte Quirin v Cox, 317 U.S. 1 (1942)
Green v United States 355 U.S. 184 (1957)
Judgment against Charles W. Keenan (31 January 1969), US Court of Military Appeals,
18 USCMA 108
My Lai (Calley), Court Martial (31 March 1971); Convening Authority (20 August 1971)
Parsons v State, 81 Ala. 577, So 2d 854 (1886)
US v Calley, Court of Military Review, CMR, 46 (1972/73) (16 February 1973) 103, 113, 118-20, 369
US v Evans, 333 U.S. 483, 68 S.Ct. 634, 92 L.Ed 823 (1948)
US v Holmes, 26 Fed Cas 360 (1842)
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