## AN INTRODUCTION TO THE INTERNATIONAL CRIMINAL COURT

Fifth Edition
WILLIAM A. SCHABAS OC MRIA



## CONTENTS

Preface page viii

|   | List of abbreviations xiv   |
|---|---|
| 1 | Creation of the Court 1 The Nuremberg and Tokyo Trials 5 The International Law Commission 8 The Ad Hoc Tribunals 11 Drafting of the Rome Statute 16   |
| 2 | The Court Becomes Operational 23 The Rise and Fall of US Opposition 25 The First Situations: Civil War in Central Africa 30 Security Council Referrals: Sudan and Libya 35 Post-Election Violence: Kenya and Côte d'Ivoire 39 Cultural Property in Mali 40 Civil War in Georgia 41 Malaise in Africa 42 |
| 3 | Jurisdiction46Temporal (Ratione Temporis) Jurisdiction53Personal (Ratione Personae) Jurisdiction59Territorial (Ratione Loci) Jurisdiction66Acceptance of Jurisdiction by a Non-Party State69Subject-Matter (Ratione Materiae) Jurisdiction74  |
| 4 | Triggering the Jurisdiction 141 State Party Referral 144 Security Council Referral 149 Proprio Motu Authority of the Prosecutor 157 Security Council Deferral 163   |

vi CONTENTS

| 5  | Admissibility 169 Complementarity 170 Gravity 182  |     |
|----|--|-----|
| 6  | General Principles of Criminal Law Sources of Law 189 Interpreting the Rome Statute 198 Presumption of Innocence 202 Rights of the Accused 205 Individual Criminal Responsibility 211 Responsibility of Commanders and Other Superiors Mens Rea or Mental Element 221 Defences 224 Statutory Limitation 230  | 219 |
| 7  | Investigation and Pre-Trial Procedure 232  Preliminary Examination 235  Initiation of an Investigation 238  Investigation 242  Arrest and Surrender 254  Appearance before the Court and Interim Release  Confirmation Hearing 266  Rulings on Jurisdiction and Admissibility 275  Preparation for Trial 280 | 263 |
| 8  | Trial and Appeal 283 Presence at Trial 285 Defence and Right to Counsel 290 Guilty Plea Procedure 292 Evidence 293 Protective Measures for Witnesses 303 Decision 306 Sentencing Procedure 311 Appeal and Revision 312   |     |
| 9  | Punishment 319 Available Penalties 323 Enforcement 328   |     |
| 10 | Victims of Crimes and Their Concerns Victim Participation in Proceedings 339 Reparations for Victims 350 Institutions for Victims 352  |     |

CONTENTS vii

Structure and Administration of the Court 11 360 Headquarters in The Hague Relationship with the United Nations 361 Presidency 362 363 ( Chambers Office of the Prosecutor 368 Registry 373 Coordination Council 374 Advisory Committee on Legal Texts 374 Detention Unit 375 Outreach Defence Bar 378 Assembly of States Parties 381 Review Conference 382 Friends of the Court 384 Privileges and Immunities 384 Languages 386 **Funding** 387 Settlement of Disputes 388 Reservations and Declarations 389 Amendment 393 Signature, Ratification, Approval and Accession 395 Authentic Text 397

## **Appendices**

Appendix 1 Rome Statute of the International Criminal
Court 401

Appendix 2 States Parties and Signatories to the Rome
Statute 496

Appendix 3 Reservations and Declarations 502

Appendix 4 Objections 513

Bibliography 518

Index 577