Table of Contents

Introduction		17
I. Approa	ach and Conceptual Framework	17
1. Ove	rview of the Research Topic	17
2. App	roach and Demand for Research	21
II. Scope	and Methodology	22
	ne Relationship between International Criminal Law d Human Rights	29
Chapter One:	Introduction	29
Chapter Two:	Human Rights Law and Procedural International Criminal Law	33
I. Ad Hoo	Tribunals	35
II. ICC		39
1. Art.	21 (3) ICC	39
2. Wha	at are 'internationally recognized human rights'?	42
Chapter Three	: Human Rights Law and Substantive International Criminal Law	46
I. Relatio	nship ICL – Substantive HR:	46
	archy vs Horizontal Completion	50
	ctural Differences vs Universality	55
II. Legal E	Basis for the Application of Extra-Statutory	
Substan	ntive Law	60
1. Ad 1	Hoc Tribunals	61
2. ICC		62
a.	Art. 21 (3) Rome Statute	63
b.	Art. 21 (1) (b) Rome Statute	64
	Guidance and Interpretational Aid	68
III. Applica	ation of Substantive Extra-Statutory Human Rights	
Law an	d the Principle of Nullum Crimen Sine Lege	69
1. The	concept of nullum crimen sine lege?	69
2. Null	um Crimen Sine Lege in International Criminal Law	70

3.	How is this area of conflict solved in international criminal jurisprudence?	76
Chapter I	our: Concluding Remarks	81
Part Two	How are Different Areas of Human Rights Law Referred to in International Criminal Jurisprudence?	83
Chapter (ne: Prohibition of Torture and 'Other Inhumane Acts'	84
	nere was the Prohibition of Torture Referred to at Ad Hoc bunals?	84
1.	The Specific Elements in the Definition of Torture as a Crime against Humanity	84
	a. Akayesub. Delalić and others (Čelebići)	85 86
	c. Furundžija	90
	d. Kvočka e. Krnojelac	94
	f. Kunarac and others	97
2	The state of the s	104
	nere Could the Prohibition of Torture Have Been Referred	107
1.	State Obligations Regarding the Prohibition of Torture	
		108
		108
		109 110
		111
2.	The Prohibition of Torture under International Criminal	
		112
		112
	(1) Causing serious bodily or mental harm	
	스러 요즘에 그렇게 얼굴하다고 맛있다면서 이번 나가 되었다면서 얼굴을 하셨다면 하겠다면 하셨다면 하는데 아니라 아니라 아니라 아니라 아니라 아니라 다른데 그는데 그는데 그는데 그는데 그는데 그는데 그는데 그는데 그는데 그는	112
	(2) Deliberately inflicting on the group conditions of life calculated to bring about its physical	
	destruction in whole or in part (Art. 6 (c) Rome Statute)	114
	Diame.	4 1 7

	(3) Imposing measures intended to prevent births within the group (Art. 6 (d) Rome Statute) This modality of committing genocide covers acts such as '[forced] sterilization, compulsory	115
	abortion, segregation of the sexes and obstacles	115
1.5	to marriage'.	115
D)	Crimes against Humanity	116
	(1) Torture (Art. 7 (1) (f) Rome Statute)	116
	(2) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity (Art. 7 (1) (g) Rome Statute)	118
		110
	(3) Enforced disappearance of persons (Art. 7 (1)(i) Rome Statute)	118
	(5) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health	
0)	(Art. 7 (1) (k) Rome Statute) War Crimes	121 122
c)		
	 Grave breaches of the Geneva Conventions Other serious violations of the laws and customs applicable in international armed conflict 	122
	(3) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions	123
		123
	(4) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established	
	framework of international law	123
IV. Conclu	ding Remarks	123
Chapter Two:	Minority Rights Law	124
I. What is	a Minority in the Context of Crimes under	
	tional Law?	124
	Has Minority Rights Law Been Referred to?	127

III.	Where Could Minority Right Law Have Been Referred to?	129
	1. The Categorization of Groups Falling under the Ambit of	
	Protected Groups Within the Definition of Genocide	130
	2. The Definition of Persecution	132
	3. The Definition of a Stigmatised Group within the Crime	
	of Persecution	134
IV.	Where is the Link?	135
	1. State Obligations regarding the Protection of Minorities	
	from Crimes under International Law	135
	a) Charter of the United Nations	137
	b) International Covenant on Civil and Political Rights	139
	c) United Nations Declaration on the Rights of Persons	
	belonging to National or Ethnic, Religious and	
	Linguistic Minorities	141
	d) Responsibility to Protect	144
	e) International Convention on the Elimination of All	
	Forms of Racial Discrimination	145
	f) Council of Europe Framework Convention for the	
	Protection of National Minorities	146
	g) Other Instruments Relevant to the Protection of	
	Minorities from Crimes under International Law	147
	2. Protection of Minorities under International Criminal Law	149
	a) Genocide (Art. 6 Rome Statute)	149
	b) Crimes against Humanity/Persecution	153
	(1) Important Developments in Terms of Minority	
	Protection	153
	(1.1) Crimes against Humanity and Armed	
	Conflict	154
	(1.2) Crimes Against Humanity and Non-State	
	Actors	156
	(2) Specific Crimes and Their inherent Minority	
	Element	157
	(2.1) Murder/Extermination	157
	(2.2) Deportation or Forcible Transfer of	
	Population	158
	(2.3) Rape, Sexual Slavery, Enforced	
	Prostitution, Forced Pregnancy, Enforced	
	Sterilisation, or any other Form of Sexual	
	Violence of Comparable Gravity	158

with a Particularly Prominent Minority	
Element	159
(2.5) Enforced Disappearance of Persons	162
(2.5) The Crime of Apartheid	162
c) 'Ethnic Cleansing' in International Criminal Law	163
d) War Crimes (Art. 8 Rome Statute)	166
(1) International Armed Conflicts	168
(1.1) Article 8 (2) (a) Rome Statute: Grave	100
Breaches of the Fourth Geneva	
Convention Protecting Civilian Persons in	
Times of War:	168
(1.2) Article 8 (2) (b) Rome Statute: Other	100
serious violations of the Laws and	
Customs Applicable in International	
Armed Conflict, within the Established	
Framework of International Law:	169
(2) Non- International Armed Conflicts	169
(2.1) Article 8 (2) (c) Rome Statute: Serious	
Violations of Article 3 Common to the	
four Geneva Conventions of 12 August	
1949	169
(2.2) Article 8 (2) (e) Rome Statute: Other	
Serious Violations of the Laws and	
Customs Applicable in Armed Conflicts	
not of an International Character, within	
the Established Framework of	
International Law:	170
V. Concluding Remarks	170
Chapter Three: Women's Rights/The Prohibition of Gender-Based	
Violence	171
I. Where Were Women's Human Rights Referred to?	175
Sexual Assault as Persecution	175
2. Rape as Torture	177
II. Where Could Women's Human Rights Have Been Referred	
to?	183
1. Genocide	183
2. Definition of Rape	185
N 2000 N 200	

3. Pers	secution	192
III. Where	is the Link?	196
1. Stat	e Obligations regarding Violence against Women	197
a.	International Covenant on Civil and Political Rights International Covenant on Economic, Social and	199
	ultural Rights	202
	Convention on the Elimination of All Forms of	
	iscrimination against Women and the Committee on	
	ne Elimination of Discrimination against Women	206
	International Convention on the Elimination of all	
F	orms of Racial Discrimination	210
	UNGA Declaration on the Elimination of Violence	210
7.736	African Charter on Human and Peoples Rights	210
	Banjul Charter)	211
3074	Beijing Declaration and Platform for Action	212
	ection of Women against Gender-Based Violence in	
	rnational Criminal Law	213
a.	Genocide	214
b	Crimes against Humanity	216
	(1) Sexual Violence	216
	(2) Persecution	216
	(3) Enslavement/ Sexual Slavery	220
c.	War Crimes	221
IV. Conclu	iding Remarks	226
Chapter Four:	Conclusions Drawn from Case-Law Analysis	228
	erception of the Value of Human Rights Law from the	
Vi	ew of Practitioners	233
Chapter One:	Perceptions of Human Rights Law in a Diverse	
	Professional Environment	233
	arding Professional Diversity on the Bench at the ICC	239
(100 pt)	eral attitude of judges towards the importance of	OF STREET
	L in ICL	243
2. Spe	cific relevance of the recourse to human rights law in	
subs	stantive international criminal law	245

II. Professional and Personal Factors Contributing to the	
Attitude towards International Human Rights Law	247
1. Public International Law Experts/(National) Criminal	
Law Experts	247
2. Common Law/Civil Law	249
3. Academics/Practitioners	250
4. Developing Country/Industrialized Country	250
Chapter Two: Concluding Remarks	252
Conclusion	255
Annex	265
Bibliography	267