International Crimes and Exclusion from Asylum in a Swedish Context

Hevi Dawody Nylén

Not every asylum seeker who applies for international protection will be provided with refugee or subsidiary protection. In fact, the applicant may be excluded from such protection if he or she has been involved in serious criminal offences. The exclusion clause[1], which originally falls within the normative scope of refugee law, is unique in a way. Assessment of the clause requires guidelines and inspiration from both domestic and international criminal law. To justify its application, it is clear that two distinct legal fields must interact. This raises the question – is it mainly domestic or international criminal law that comes into play in the assessment of the exclusion clause?

The first part of this article gives an introduction to the exclusion clause in international law, with a further analysis in light of international cases. The second part focuses on the exclusion rules in the Swedish domestic legal system and relevant domestic case law. The article concludes with a final analysis.

1 The Exclusion Clause in International Law

The international refugee system developed in the aftermath of the Second World War. As one consequence of the devastation wrought during the War, the United Nations adopted the 1951 Convention Relating to the Status of Refugees (hereinafter the 1951 Refugee Convention or the Convention),[2] to provide refugee protection for those fleeing prosecution from their country of origin.[3] During adoption of the Convention, its scope was limited to those fleeing within Europe and it related to the period of the Second World War. With the adoption of the 1967 Protocol Relating to the Status of Refugees,[4] the scope of the 1951 Convention was expanded to other geographical areas than the Eurocentric. In addition, the war time restriction was also eliminated. Through adoption of the 1967 Protocol, the Refugee Convention became the universal instrument of international refugee law.[5] The Convention was sought to ensure protection of those who needed it most, which is probably why it is more known for its protective elements, and less recognized for the provision that excludes an asylum seeker from international refugee protection.

---

1 Chapter 4 section 2 b and c of the Aliens Act (2005:716), entered into force 1 January 2010.

2 Convention Relating to the Status of Refugees, adopted 28 July 1951 GA res. 429 (V), entered into force 22 April 1954.

3 Hathaway, C, James, *The Rights of Refugees Under International Law*, Cambridge: Cambridge University Press, 2005, p. 4-5; Robinson, Nehemiah, *Convention relating to the Status of Refugees: Its History, Contents and Interpretation, A Commentary*, New York: Institute of Jewish Affairs, World Jewish Congress, 1953, p. 6-7.

4 The 1967 Protocol Relating to the Status of Refugees, entered into force 4 October 1967.

5 Malkki, H. Liisa, 'Refugees and Exile: From Refugee Studies to the National Order of Things', Annual Reviews Anthropology, 1995, 495, p. 501.

Article 1 F of the Refugee Convention, known as the exclusion clause,[6] is the opposite to the Convention's Article 1 A.[7] Under the exclusion clause, those who meet the prima facie definition of refugees must be denied protection under the Refugee Convention if they have been involved in crimes, such as crimes against peace, crimes against humanity, war crimes, serious non-political crimes or acts contrary to the purposes and principles of the United Nations.[8]

The initial agreements amongst the international community during the Interwar period focused mainly on identifying those who were considered refugees and not essentially on the rules concerning exclusion from refugee protection. However, during the drafting of the Convention, criminal convictions of war criminals from yet another global war were still proceeding. It became vital to ensure that criminal fugitives did not take advantage of the refugee legal system. So the interest of the international community shifted towards finding not only those who needed protection, but also potential war criminals. The intention was not to shelter war criminals but to exclude them from the group of people entitled to refugee protection.[9] Agreement amongst the international community was clear – perpetrators would not be guaranteed refugee protection and would fall outside the protective scope of the 1951 Refugee Convention.[10]

1.1 The Purpose of Article 1 F of the 1951 Refugee Convention

The rules of Article 1 F, the exclusion clause, shall be considered by the host State where the person applies for asylum. Hence, the burden of proof lies on the State.[11] To justify the application of the clause,[12] the standard of proof "serious

---

6 Article 1 F of the 1951 Refugee Convention shall not be confused with Article 1 C, 1 D and 1 E of the Convention. Article 1 C regulates cession of status, for example, in the case of voluntary return, acquisition of a new, effective nationality, or change of circumstances in the country of origin. Article 1 D puts Palestinian refugees outside its scope, for political reason, at least while they continue to receive protection or assistance from other UN agencies. Article 1 E focuses on the excluding those who are treated as nationals in their state of refuge, see Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees (UNHCR handbook), HCR/IP/4/Eng/REV.1, Reedited, Geneva, January 1992, UNHCR 1979, p. 42-43, para. 142 and 144.

7 Article 1 A is the provision providing the substantive matter of determining who is recognized as a refugee.

8 Article 1F states; The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that: (a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes; (b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee; (c) he has been guilty of acts contrary to the purposes and principles of the United Nations.

9 UNHCR handbook, p. 44, para. 147.

10 UNHCR handbook, p. 44, para.148.

11 Initially stated by the Migration Court of Appeal in case MIG 2011:24.

12 Article 1 F is of binding nature, meaning that the exclusion clause must be considered in the process of determining if an applicant can be provided refugee status.

reasons for considering" must be fulfilled. The original purpose of the exclusion clause was to restrict and avoid giving international protection to individuals who were involved in serious and heinous crimes.[13] To protect the credibility and the fundamental principles of the Refugee Convention, Article 1 F emphasizes a balance between two interests. On the one hand, it is essential to maintain the integrity of the refugee system and not provide protection to those who deserves it least. On the other hand, it is also crucial to consider the serious consequences of excluding a bona fide asylum seeker from the protection of the Convention.[14]

1.2 The Consequences of the Exclusion Clause

In cases where the exclusion clause is applicable, the asylum seeker can no longer claim refugee status or be afforded protection under the Refugee Convention; the person falls outside the entire normative scope of the Convention and, similarly, outside the mandate of the United Nations High Commissioner for Refugees (UNHCR). Nevertheless, the exclusion clause does not require the host State to deport the excluded applicant. As for the serious consequences of the exclusion clause, the interpretation of the provision must be restrictive.[15]

1.3 Human Rights Law as a Complementary Protection

Asylum seekers excluded under Article 1 F cannot enjoy protection under the Refugee Convention. Nevertheless, the Convention does not eliminate protection from other international legal fields. In cases of exclusion, international human rights law is inserted to guarantee complementary protection. Clearly, the principle of sovereignty affords the State the power to determine matters of residence or deportation within its own territory. Regardless of the principle of sovereignty, States must respect and protect individuals, and prevent violations concerning extradition rules and fundamental principles, such as the *non-refoulement* principle, when determining excludable acts in the individual asylum case.[16] Hence, provisions under human rights law

---

[13] United Nations High Commissioner for Refugee (UNHCR), Guidelines on International Protection: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees, HCT/GIP/03/05, 4 September 2003, p. 2, para. 2.

[14] Egelman, Zoe, *Punishment and Protection, Two Sides of the Same Sword: The Problem of International Criminal Law under the Refugee Convention*, Harvard International Journey 2018, vol. 59, no. 2, 461, p. 465; United Nations High Commissioner for Refugee (UNHCR), Guidelines on International Protection: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees, HCT/GIP/03/05, 4 September 2003, p. 2, para. 2.

[15] UNHCR handbook, p. 44, para. 149; United Nations High Commissioner for Refugee (UNHCR), Guidelines on International Protection: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees, HCT/GIP/03/05, 4 September 2003, p. 2, para. 2.

[16] The principle of non-refoulement has its origin in Article 33 of the 1951 Refugee Convention which obliges States to not "expel or return ("refouler") a refugee in any manner whatsoever

protect the excluded applicant from extradition to a country where he or she might face torture, inhuman or degrading treatment or punishment.[17]

1.4 The Scope of Article 1 F (a) – Crimes against Peace, Crimes against Humanity and War Crimes

Article 1 F (a) refers to international crimes such as crimes against peace, crimes against humanity and war crimes as defined in the international instruments drawn up to make provision in respect of such crimes.[18] The paragraph refers to persons with respect to whom there are serious reasons for considering that they have committed exclusion crimes of international character. The formulation – *as defined in the international instruments* – refers explicitly to the significance of obtaining guidelines from international conventions and agreements.[19] The definitions of international crimes have evolved since the Second World War. Some of the most detailed definitions and notions of international crime exist today in several substantial international instruments. Examples are the 1945 Charter of the International Military Tribunal (the London Charter), the Statute of the International Criminal Tribunals of the Former Yugoslavia and Rwanda, and the 1948 Convention on the Prevention and Punishment of the Crime of

---

to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion." An exception to this rule is contained in the second paragraph of Article 33, which justifies expulsion of a refugee if there are "reasonable grounds for regarding [the refugee] as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country." Hence, the principle of non-refoulement within the scope of international refugee law is not absolute. However, the same principle exists in international human rights law. The obligation not expel or return an individual who might be subject to serious threats against his or her life and freedom exists in several human rights instruments, such as the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention on Human Rights) and its Additional Protocol, the 1984 Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (the Convention against Torture) and the 1966 International Covenant on Civil and Political (ICCPR). The European Convention on Human Rights covers an extended scope of treatments that the individual shall be protected from, for instance, death, torture, inhuman and degrading treatment. The European Convention of Human Rights, through its case practice, protects individuals from expulsion to countries where they might face treatments listed in Article 3. Within the context of international human rights law, the principle of non-refoulement is an absolute norm. Hence, an applicant who prima facie fulfills the criteria for refugee status, will be protected from expulsion through the principle of non-refoulement enshrined in international human rights law.

17 The protection is integrated in several international human rights instruments, such as the European Convention on Human Rights (Article 3), the Convention against Torture (Article 3), and the ICCPR (Article 7); United Nations High Commissioner for Refugee (UNHCR), Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees, Department of International Protection, Geneva, 4 September 2003, p. 8, para. 22.

18 Article 1 F (a) of the 1951 Refugee Convention.

19 UNHCR handbook, p. 44 f, para 150 refers to international instruments that particularly are of interest as guidance when interpreting the definitions of international crimes.

Genocide (the Genocide Convention).[20] Yet the most recent effort to define the notion of international crimes is the Statute of the International Criminal Court from 1998 (the Rome Statute).[21] The definition of these crimes was further elaborated in the Elements of Crimes of 2003.[22] The crime of aggression (crime against peace) was not initially defined when the Rome Statute entered into force. Instead, the crime was first defined in accordance with an agreement in Kampala in 2010.[23]

Similar to the original intention of the 1951 Refugee Convention, Article 1 F (a) became a post-rationalization of the experience of the Second World War. The legislators sought to identify war criminals who did not deserve refugee

---

[20] Nuremberg Charter (Charter of the International Military Tribunal), London, 8 August 1945; Convention on the Prevention and Punishment of the Crime of Genocide, adopted 9 December 1948 GA res. 260 A (III), entered into force 12 January 1951; UNHCR handbook, p. 44 f, para. 150.

[21] Rome Statute of the International Criminal Court, adopted in Rome 17 July 1998, entered into force 1 July 2002, Articles 6-8*bis*; MIG 2011:14, MIG 2012:24, MIG 2017:11, MIG 2017:29; Other international instruments which may be useful when interpreting the international crimes enshrined in the exclusion clause are the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (the Genocide Convention), the four 1949 Geneva Conventions for the Protection of Victims of War, the 1973 International Convention on the Suppression and Punishment of the Crime of Apartheid, the 1977 Additional Protocol to the Geneva Conventions of 12 August 1949 Relating to the Protection of Victims of International Armed Conflicts (Additional Protocol I), the 1977 Additional Protocol to the Geneva Conventions of 12 August 1949 Relating to the Protection of Victims of Non-International Armed Conflicts (Additional Protocol II), the Convention against Torture, the Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (the ICTY Statute), the Statute of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighboring States, between 1 January 1994 and 31 December 1994 (the ICTR Statute). Relevant non-binding but authoritative sources are - the 1950 Report of the International Law Commission (ILC) to the General Assembly (including the Nuremberg Principles), the 1973 Principles of International Cooperation in the Detection, Arrest, Extradition and Punishment of Persons Guilty of War Crimes and Crimes against Humanity, and the Draft Code of Crimes against the Peace and Security of Mankind, provisionally adopted by the ILC in 1996, see United Nations High Commissioner for Refugee (UNHCR), Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees, Department of International Protection, Geneva, 4 September 2003, p. 9 f, para. 23-24.

[22] United Nations High Commissioner for Refugees (UNHCR), Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees, Department of International Protection, Geneva, 4 September 2003, p. 9, para. 23. The Elements of Crimes also became binding upon the State Parties to the Rome Statute.

[23] Prop. 2009/10:31, p. 107. The International Criminal Court has since 17 July 2018 gained jurisdiction over crimes of aggression, see International Criminal Court, 'Assembly of States Parties, Draft resolution proposed by the Vice-Presidents of the Assembly Activation of the jurisdiction of the Court over the crime of aggression', 14 December 2017, New York, Sixteenth session, CC-ASP/16/L.10; Resolution RC/Res.6, Adopted at the 13th plenary meeting, 11 June 2010; Resolution ICC-ASP/16/Res.5, Adopted at the 13th plenary meeting, 14 December 2017.

protection or refugee status.[24] Even though the procedure of the exclusion clause falls within the scope of domestic migration law,[25] the exclusion paragraph[26] relating to international crimes cannot be fully examined without considering international criminal law.[27] This has been confirmed in several international cases, such as *R (JS)(Sri Lanka),*[28] *Tamil X*[29] and *Ezokola.*[30]

In the *R (JS) (Sri Lanka)* case, the applicant, a Sri Lanka national, had been a member of the Liberation Tigers of Tamil Eelam ("LTTE") since the age of 10. The applicant had been involved in military operations since the age of 16 until 2006. He subsequently became aware that his involvement in the organization was discovered and fled his home country to apply for asylum in the UK. The Court's ruling addressed two interesting aspects. First, the fact that someone is a member of an organization involved in criminal conduct in war crimes does not represent a serious reason for considering that the person has committed crimes under Article 1 F (a). Secondly, the Court underlined the importance of the Rome Statute as the fundamental instrument to use when defining international crimes and determining criminal liability.

In the *Tamil X* case, the applicant was also a Sri Lanka national and a member of the LTTE. He fled his country of origin and applied for asylum in New Zealand. The Court initially stated that, regardless of whether LTTE seemed to be advocating political purposes, the fact that it had been involved in serious international crimes such as crimes against humanity and war crimes could not be ignored.[31] The Court held, similar to the *R (JS)(Sri Lanka)* case, that the Rome Statute should be the main reference source when interpreting the definition of international crimes and ruling on the principle of individual criminal responsibility.[32]

In the *Ezokola* case, the applicant, a national of the Democratic Republic of Congo who applied for asylum in Canada, had long worked for the government in financial matters. The legal question before the Canadian court was whether the applicant's participation in the Congolese government could amount to a

---

[24] There was an ongoing and substantial debate about how the exclusion from involvement in international criminals should be framed and defined, see Hathaway, C James & Foster, Michelle, *The Law of Refugee Status*, Cambridge: Cambridge University Press, 2014, p. 567.

[25] Originally belongs to domestic administrative regulations and administrative procedural regulations.

[26] Article 1 F (a) of the 1951 Refugee Convention and Article 12.2 (a) of the Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (the Qualification Directive).

[27] Egelman, 2018, p. 465.

[28] *R (JS)(Sri Lanka)* (UKSC, 2010).

[29] *Tamil X* (NZSC, 2010).

[30] *Ezokola* (Can. SC, 2013).

[31] *Tamil X* (NZSC, 2010), para. 2.

[32] *Tamil X* (NZSC, 2010), para. 47.

serious reason for considering that he had committed crimes under Article 1 F (a).[33]

The common position of the various courts in different jurisdictions in the cases mentioned, which also paved the way for similar arguments among other jurisdictions, was to recognize the Rome Statute as the most legitimate international instrument to use for understanding elements of international crimes and criminal responsibility.[34] In fact, these statements are ally with the actual wording of the paragraph – *as defined in the international instruments drawn up to make provision in respect of such crimes*. Although the Rome Statute is recognized as the main international instrument to use for guidance, it might be relevant to consider other such instruments when examining exclusion due to involvement in international crimes.[35]

1.5 The Scope of Article I F (b) – "Serious Non-political Crimes"

The purpose of Article 1 F (b) is to protect the host State from fugitive criminals who may cause potential danger to the State.[36] This was further stressed by the European Court of Justice in joined cases *B and D*.[37] The Court underlined in its reasoning that the purpose of the exclusion clause was to limit the possibility of granting refugee protection to fugitive convicts who had been involved in serious criminal activities and fled from individual criminal responsibility.[38] To exclude such persons from protection under Article 1 F (b), the criminal offence must be

---

[33] *Ezokola* (Can. SC, 2013).

[34] *R (JS)(Sri Lanka)*, para. 9; *Tamil X* (NZSC, 2010) para 27 and 47; *Ezokola* (Can. SC, 2013), para. 48.

[35] United Nations High Commissioner for Refugee (UNHCR), Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees, Department of International Protection, Geneva, 4 September 2003, p. 10, para. 25.

[36] UNHCR handbook, p. 45, para. 151.

[37] In this case, B a Turkish national and supporter of DevSol (DHKP/C) applied for asylum in Germany. His application was rejected because he had conducted serious non-political crime. D, also a Turkish national, is a member of the PKK and had been provided asylum in Germany. In D's case, the authorities aimed to revoke his asylum as he had committed a serious non-political crime outside of Germany before being admitted to its territory as a refugee. Furthermore, he was also found guilty of acts contrary to the purposes and principles of the United Nations. One of the most important elements that emerged before the Court, in the joined cases, was the issue of individual responsibility to persons based on their membership to a terrorist organization. The Court initially started with taking into consideration the terrorist character of the organization. Additionally, the Court continued with analyzing the effect of membership to that organization on the exclusion from protection. The Court's conclusion was that mere membership or participation in the activities of the organization (as enshrined in Article 2.2 (b) of the Framework Decision 2002/475), does not automatically amount to exclusion from protection. What is required to focus on in order to justify exclusion is "to attribute to the person concerned a share of responsibility for the acts committed by the organization in question while that person was a member." *Bundesrepublik Deutschland v B and D*, Joined Cases C-57/09 and C-101/09, 9 November 2010, para. 95.

[38] *Bundesrepublik Deutschland v B and D*, Joined Cases C-57/09 and C-101/09, 9 November 2010; *Febles v. Canada*, (Citizenship and Immigration), 30 October 2014.

of a "serious non-political" character. Even though the excludable act must be serious, it is difficult to understand the actual meaning of "serious non-political crimes", especially when the concept of *crime* contains different meanings in different jurisdictions.[39] For this reason, it seems more relevant to provide the executives with the power to determine, in accordance with preparatory work and international guidelines, those sorts of offence that fall within the scope of "serious non-political crimes". In the case of *Shajin Ahmed vs Hungary,*[40] the issue concerning interpretation of "serious crime" under Article 17.1 (b) of the Qualification Directive was raised before the European Court of Justice. The applicant, a Hungarian national, had been sentenced to prison for attempted murder and extortion. Both crimes were committed in Hungary. According to Hungarian legislation, different sorts of conduct that led to imprisonment for five years or more were considered to meet the threshold of "serious crime". And thus, the basis for exclusion from subsidiary protection status was justified.

Another interesting aspect deliberated in the case was whether the high penalty sanction *per se* was sufficient for exclusion, or whether it was required that the individual had been convicted under a criminal proceeding (as indicated in joined cases *B and D).* The Court ruled that it was not sufficient only to consider the actual punishment of the criminal conduct regulated in the domestic criminal law of the Member State. Instead, the State needed to make a full examination of all the circumstances of the case in order to determine whether it was sufficient to exclude an applicant from refugee or subsidiary protection due to involvement in a "serious crime".[41]

In MIG 2014:24, the Migration Court of Appeal emphasized the importance of the UNHCR guidelines on exclusion from refugee status as an essential document for understanding what sort of criminal conduct constitutes a "serious crime".[42] According to the UNHCR, some relevant criteria need to be fulfilled in order to consider the crime as "serious". For instance, "the nature of the act, the actual harm inflicted, the form of procedure used to prosecute the crime, the nature of the penalty, and whether most jurisdictions would consider it a serious crime" are elements to examine.[43] Murder, rape or armed robbery are commonly accepted as serious offences, whereas, for instance, petty theft, is not.[44]

---

39 UNHCR handbook, p. 45, para. 155.

40 *Shajin Ahmed v Bevándorlási és Menekültügyi Hiavatal***,** C-369/17, 13 September 2018.

41 *Shajin Ahmed v Bevándorlási és Menekültügyi Hiavatal*, C-369/17, 13 September 2018, para. 55-57.

42 MIG 2014:24. In this case, the issue brought before the Court was whether the crime the applicant had committed in his home country emerged to a serious crime, which could amount to exclusion from subsidiary protection; Prop. 2009/10:31, p. 107 f, 120 f. and 261; UNHCR handbook, p. 44 ff, para. 151-161 refer particularly to "serious non-political crimes".

43 United Nations High Commissioner for Refugee (UNHCR), Guidelines on International Protection: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees, HCT/GIP/03/05, 4 September 2003, p. 5, para. 14.

44 United Nations High Commissioner for Refugee (UNHCR), Guidelines on International Protection: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees, HCT/GIP/03/05, 4 September 2003, p. 5, para. 14; MIG 2014:24; Federal Administrative Court of Germany, *BVerwG* 10 C 24.08, 24 November 2009.

Moreover, it is essential to consider international standards rather than local standards when examining whether the criminal offence meets the threshold of "serious",[45] even though the actual wording of Article 1 F (b) makes no reference to international instruments.

1.6 The Scope of Article 1 F (c) – Acts Contrary to the Purposes and Principles of the United Nations

Article 1 F (c) excludes persons from protection if there are serious reasons for considering that they have committed acts contrary to the purposes and principles of the United Nations. The paragraph clearly correlates to Article 1 F (a), where the crimes constitute offences contrary to the purposes and principles of the entire United Nations. Even though the wording of Article 1 F (c) is generally phrased, the intention is to cover criminal offences that fall outside the scope of the crimes referred to in Article 1 F (a).

The purposes and principles of the United Nations are enshrined in the preamble of the United Nations Charter and in its first and second chapters. The principles were established because of the interest to maintain a friendly relationship among States and within the international community as a whole. Since the principles are addressed to United Nations member states, it is common ground that the paragraph indicates persons who have had leading State positions and by their actions have committed violations of the fundamental purposes and principles of the United Nations.[46] Still, some jurisprudence by the European Court of Justice and by domestic jurisdictions such as those of Belgium, France, Germany, the Netherlands and the UK, ruled that in exceptional cases individuals without leading positions in the State, could be held criminally responsible for crimes contrary to the purposes and principles of the United Nations.[47] In the *Lounani* case, the European Court of Justice confirmed this statement. The applicant, a Moroccan national with no leading State position, applied for international protection in Belgium. His application was rejected as he had been convicted and sentenced to prison for, inter alia, participation in a terrorist group, participation in the network of the organization and for providing logistical support, material sources and information to a terrorist group. The Court stressed that it was not sufficient to limit "acts contrary to the purposes and principles of the United Nations" solely to acts of terrorism, but to extend the liability to acts of perpetration, planning or preparation of terrorist acts.[48] Thus, activities involving terrorism executed with the intention to finance, plan or prepare acts of terrorism constitute violations of the purposes and principles of the United Nations as a whole. The European Court of Justice also confirmed that participation in a terrorist organization could be sufficient to exclude an applicant from refugee or subsidiary protection regardless of whether no

---

45 United Nations High Commissioner for Refugee (UNHCR), Guidelines on International Protection: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees, HCT/GIP/03/05, 4 September 2003, p. 5, para. 14; MIG 2014:24.

46 UNHCR handbook, p. 47 f, para. 162 and 163.

47 Hathaway & Foster, 2014, p. 588.

48 Similar statement is confirmed in several adopted resolutions of the United Nations.

circumstances or evidence supported the individual's having committed, tried to commit, or threatened to commit acts of terrorism. Moreover, it was not required that the individual had been convicted for terrorist crimes as defined in European Council Framework Decision 2002/475/RIF on combating terrorism.[49]

The UNHCR has also declared that individuals, with no leading or representative positions could be excluded under Article 1 F (c) for having committed serious and gross criminal offences causing threat to international peace and security or constituting violations of and harm to the protection and safety of human rights.[50]

2 The Exclusion Clause in Swedish Law

As a result of the implementation of the Qualification Directive,[51] the exclusion provisions in chapter 4 sections 2 b and c entered into force in the Aliens Act.[52] Prior to the adoption of these provisions, the Aliens Act lacked similar rules that excluded individuals from refugee or subsidiary protection. The reason was that the central rule of the legislation was to permit residence.[53] A related notion of "exclusion" was instead phrased in an earlier provision in chapter 5 section 1, which stated that authorities could refuse a refugee a residence permit if there were "serious reasons for not granting a residence permit regarding what was known of the persons prior activities" (author's translation).[54] A similar restriction was included for subsidiary protection. An application for subsidiary protection could be refused if the person's commission of a criminal offence made the authorities believe there were reasons not to grant a residence permit.[55]

To exclude an applicant from refugee or subsidiary protection, there must be *serious reasons for considering* that the person has committed one of the mentioned excludable acts. The Migration Courts remarked in several of the most leading exclusion cases – MIG 2011:24, MIG 2012:14, MIG 2017:11 and MIG 2017:29 – that the standard of proof in the Aliens Act was consistent with that in the 1951 Refugee Convention and the Qualification Directive. Moreover, it is important to consider the original purpose and intention of the 1951 Convention, which is to guarantee refugee status to those who are fleeing persecution and most in need of protection. To determine whether the standard of proof in the exclusion clause is met, an actual circumstance allowing one

---

49 *Commissaire général aux réfugiés et aux apatrides, Belgium v Mostafa Lounani*, C-573/14, 31 January 2017. One interesting aspect to compare with is what the Court stated in *B v D* case – mere membership in a terrorist organization did not automatically mean exclusion from protection.

50 Hathaway & Foster, 2014, p. 588.

51 An applicant is ensured refugee or subsidiary protection on condition that he or she does not fall within the normative scope of Article 12.2 or 17.1 of the Qualification Directive.

52 Prop. 2009/10:31. The paragraphs entered into force on 1 January 2010.

53 Prop. 2009/10:31, p. 105.

54 Prop. 2009/10:31, p. 105–106. This rule was previously contained in chapter 5 section 1 second paragraph p. 1 of the Aliens Act.

55 This rule was previously contained in chapter 5 section 1 second paragraph p. 2 of the Aliens Act; MIG 2007:22; MIG 2009:19; 2011:4.

reasonably to assume that the person has committed a listed criminal offence must be stated. Liability, such as instigating or participation in the criminal activity in other ways, could also suffice to activate the exclusion provisions. However, there is no requirement to provide supporting evidence that the person has been prosecuted or convicted. Nor is evidence required that corresponds to what is required in a criminal proceeding;[56] proceedings under the exclusion clause are dealt with by an administrative court and not by a criminal court. The fact that an individual is excluded from refugee or subsidiary protection does not automatically amount to criminal responsibility for the same act under criminal law.

However, the Swedish Migration Agency is obliged to facilitate and collaborate with the law enforcement agencies when examining exclusion cases. The Agency needs to report to the police or the prosecutor if the case officer suspects the asylum seeker of having committed international crimes. The Agency is further obliged to assist the Security Service if any case indicates involvement in acts that constitute a threat to national security. This is to assist the Security Service to prevent and reveal individuals involved in activities that relate to terrorist acts.[57] Yet it is a State prerogative to determine whether there is a need to pursue criminal proceedings in a potential exclusion case, while at the same time States are obliged under international law to prosecute or extradite persons responsible for these criminal offences.[58] Whether prosecution is necessary may be decided in accordance with the actual nature of the crime. If the crime seems to be serious and leads to criminal liability within the context of criminal law, the question of prosecution obviously becomes more relevant.

Based on the current wording of chapter 5, section 1, second paragraph, pp. 1 and 2 of the Aliens Act, a refugee must be refused residence if he or she has shown through a serious crime that letting him or her stay in Sweden would be associated with severe danger to public order and national security. The Aliens Act lacks a corresponding provision denying residence permits to anyone seeking subsidiary protection. The reason is the different wordings of the exclusion clauses relating to refugee and subsidiary protection. The context of the clause concerning subsidiary protection is wider than the provision concerning exclusion from refugee status. A person who poses a threat to the whole of society[59] or who has committed a serious crime,[60] is already excluded from subsidiary protection in accordance with Article 17.1 of the Qualification Directive and, thus, does not deserve protection or a residence permit.[61]

---

56 MIG 2011:14; MIG 2012:14; MIG 2014:24; MIG 2017:11; MIG 2017:29; Prop. 2009/10:31, p. 261–262.

57 Law (2007:996) on instructions for the Migration Agency, 2 section p. 18.

58 For instance, under the provisions of the 1949 Geneva Conventions I-IV, the 1948 Genocide Convention, the 1984 Convention Against Torture and principles as *aut dedere aut iudicare* and *aut punire aut dedere*,

59 Compare with Article 21.2 (a) of the Qualification Directive.

60 Compare with Article 21.2 (b) of the Qualification Directive.

61 Chapter 4 section 2 c of the Aliens Act; Prop. 2009/10:31, p. 138 f; Article 17.1 of the Qualification Directive.

3 Swedish Jurisprudence with Focus on Exclusion due to Involvement in International Crimes

Exclusion from refugee or subsidiary protection because of involvement in international crimes is regulated explicitly in chapter 4, section 2 b, first paragraph, pp. 1 and 3 and section 2 c, first paragraph, p. 1 of the Aliens Act. The proceedings of the exclusion provisions have been further elaborated in Swedish cases MIG 2011:24, MIG 2012:12, MIG 2017:11 and MIG 2017:29, described in this section.

The circumstances of MIG 2011:24 were as follows. The applicant, an Iraqi national, applied for asylum in Sweden and sought residence and work permits. He had worked in Saddam Hussein's Intelligence Service in his home country. He headed a department that, among other things, surveyed people involved in political and religious resistance groups, and interrogated individuals detained by the Intelligence Service. The court stressed that the applicant had met the criteria for refugee status under chapter 4 section 1 of the Aliens Act. The interesting question before the court was whether the applicant's previous employment would result in exclusion from protection; particularly whether the circumstances amounted to serious reasons for considering that the applicant had committed a crime against humanity or a war crime. The court initially referred to the preparatory work and clarified that the exclusion provision in the domestic legislation corresponded to the wording of Article 1 F of the Refugee Convention and Article 12.2 of the Qualification Directive. Further, the court emphasized the importance of taking into account the UNHCR handbook (paragraphs 147-163) and UNHCR guidelines concerning exclusion from refugee protection when interpreting the exclusion provisions.[62]

The most interesting part of the case was the court's reasoning on the sources necessary to consider when determining excludable acts of international character. The court highlighted relevant sections to the preparatory work and stressed that this particular paragraph of the exclusion clause referred to international crimes *as defined in the international instruments.* In light of its wording, one needs first to identify the international instruments, and secondly to use them as interpretive sources. The court underlined primarily paragraph 150 of the UNHCR handbook, which outlines important international instruments to use for guidance, such as the 1945 London Charter, the Statute of the International Criminal Tribunals of the Former Yugoslavia and Rwanda, and the 1948 Genocide Convention.[63] Further, the court also referred to the latest agreed definition of crime against humanity given in the Rome Statute.[64]

According to the Rome Statute, crime against humanity means criminal offences, such as murder, rape or torture committed as a part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.[65] The Rome Statue further develops the issue of "attack directed against any civilian population", meaning "a course of conduct involving the multiple

---

62 MIG 2011:24, p. 7.

63 MIG 2011:24, p. 9; prop. 2009/10:31 p. 106 f.

64 MIG 2011:24, p. 10; prop. 2009/10:31 p. 106 f and 261.

65 Article 7.1 Rome Statute.

commission of acts referred to in paragraph Article 7 (1) against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack".[66] The Rome Statute refers also to the concept of *persecution*, which means "intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity".[67] In general, the Rome Statute refers to many essential elements in relation to crimes against humanity that are of importance when applying the exclusion clause in relation to such crimes. For this reason, the court concluded that the Rome Statute is the most relevant instrument to consider when interpreting the international crimes referred to in the exclusion clause.[68]

To justify exclusion, individual responsibility must be established in relation to any of the offences mentioned in the exclusion clause. When assessing individual responsibility, the court referred to the UNHCR guidelines, which state that "individual responsibility flows from the person having committed, or made a substantial contribution to the commission of the criminal act, in the knowledge that his or her act or omission would facilitate the criminal conduct".[69] Hence, individual responsibility is assessed by considering different actions, such as physically committing the crime in question, instigating, aiding and abetting, or participation in a joint criminal enterprise.[70] Further, the court referred to UNHCR guidelines on the concept of *presumption of individual responsibility*. The fact that the applicant had a leading position in a repressive government or participated in an organization involved in serious criminal activities is not sufficient to constitute individual responsibility for excludable acts. However, a presumption of responsibility may entail individual liability if the applicant remained a member of the regime or the organization that clearly committed conduct within the scope of Article 1 F of the Refugee Convention.[71] The court further adduced the statement of the European Court of Justice presented in the joint cases of *B and D*, where it highlighted some essentials to consider when examining presumption of responsibility. According to the European Court of Justice, the necessary elements to examine include the actual role the individual played when the crime was committed, the individual's position within the organization, the extent of knowledge the individual had or was deemed to have had concerning the activities of the organization, whether the individual was exposed to any pressure to commit certain acts, or whether

66 Article 7.2 Rome Statute.

67 Article 7.1 h Rome Statute.

68 MIG 2011:24, p. 10.

69 United Nations High Commissioner for Refugee (UNHCR), Guidelines on International Protection: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees, HCT/GIP/03/05, 4 September 2003, p. 6, para. 18.

70 United Nations High Commissioner for Refugee (UNHCR), Guidelines on International Protection: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees, HCT/GIP/03/05, 4 September 2003, p. 6, para 18.

71 United Nations High Commissioner for Refugee (UNHCR), Guidelines on International Protection: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees, HCT/GIP/03/05, 4 September 2003, p. 6, para 19.

there are other factors likely to have influenced the individual's behavior.[72] If the authority in the host State finds that the individual had a senior position in an organization involved in terrorist methods and crimes, that authority is entitled to presume that the individual held criminal liability for excludable acts conducted by the organization at that particular time. Nevertheless, to justify any decision of exclusion from refugee or subsidiary protection, all the relevant circumstances of the case must be fully examined.[73] Also, individual criminal responsibility must always be examined in the light of both objective and subjective criteria.[74]

The second case, MIG 2012:14 concerned an Iraqi national who had been a member of the Baath party and had a leading position in a student organization. The legal question before the court was whether those circumstances constituted excludable acts. The central acts relevant in the case were crime against humanity and acts contrary to the purposes and principles of the United Nations. The court, similar to its reasoning in MIG 2011:24, stated that the Rome Statute is the most central instrument to refer to when defining the normative scope of crime against humanity. In defining "acts contrary to the purposes and principles of the United Nations", the court declared the UNHCR guidelines to be a relevant interpretative source (particularly paragraphs 162 and 163). According to the UNHCR guidelines, Article 1 F (c) of the Refugee Convention is generally phrased and correlates partly with Article 1 F (a). The clause is intended to focus on activities that violate the purposes and principles of the United Nations, as stated in the Preamble to and in the first and second chapters of the UN Charter. In addition, the purpose of the clause is to include acts that fall outside the scope of the other excludable acts mentioned in Article 1 F.[75]

MIG 2017:11 concerned a Syrian national who had since 2006 worked as a doctor in the Syrian Intelligence Agency. The applicant treated wounded soldiers from the military forces and their family members. He was also responsible for medical care of persons detained by the Agency. It was uncontested that the applicant needed international protection. Instead, the main question was whether he could be held individually responsible for committing crime against humanity. Once again, in order to find guidelines on the necessary element in the scope of crime against humanity and to determine the issue of individual responsibility, the court referred to the relevant international instruments and jurisprudence mentioned in previous Swedish exclusion cases. However, in this particular case, the court emphasized the relevance of international criminal law when assessing whether an individual is responsible for a crime and hence

---

[72] *Bundesrepublik Deutschland v B and D*, Joined Cases C-57/09 and C-101/09, 9 November 2010, para. 97.

[73] *Bundesrepublik Deutschland v B and D*, Joined Cases C-57/09 and C-101/09, 9 November 2010, para. 95–98.

[74] *Bundesrepublik Deutschland v B and D*, Joined Cases C-57/09 and C-101/09, 9 November 2010, para. 96; MIG 2011:24; MIG 2012:14.

[75] MIG 2012:14, p. 11.

should be subject to the exclusion clause. To support this statement, the court referred to some well-known cases, such as *Furundzija*[76] and *Tadic.*[77]

The court clarified that the international criminal law notions of instigation of or actual participation in the criminal conduct constitute different sorts of action. An example is the provision of practical assistance, encouragement or moral support for perpetration of the criminal offence. Furthermore, the notions require the knowledge that one's contribution to some extent promotes or facilitates execution of the crime.[78] The court further clarified that even though it seems necessary to establish a link between the person's actual contribution and the execution of the crime, there is no requirement to demonstrate that the crime would not have been committed without the person's contribution. To justify criminal liability as either instigation or participation, it is sufficient to confirm that the person was aware of the substantial parts of the criminal offence.[79]

In MIG 2017:29 the court determined that information relating to the applicant's position as a conscript and a member of a special force unit in regiment 46 in Homs during the spring of 2012 was reliable. The court found that the applicant was trustworthy in his well-founded fear of persecution for his political opinion. The relevant question was whether the applicant's circumstances would result in exclusion from refugee protection. The court initially noted that several documents concerning the situation in Syria indicated that the Syrian army had committed crime against humanity in the region of Homs, where the applicant was located as a conscript, during the spring of 2012. Hence, it was indisputable that excludable acts as regulated in chapter 4, section 2 b, first paragraph, p. 1 of the Aliens Act had occurred.[80] However, the court concluded that the overall facts of the case were not sufficient to believe that the

---

[76] *Prosecutor v. Furundzija,* (Case No. IT-95-17/1-T), ICTY T.Ch., Judgment 10 December 1998. In this case, Anto Furundžija, a Bosnian national, was a commander of a special unit of the Croatian Defence Council called the "Jokers." He was brought before the ICTY for offenses against Bosnian Muslims during interrogation by the "Jokers" in Nadioci (Bosnia and Herzegovina) in May 1993. It was stated that the detainees during the interrogations were subjected to serious violations, such as rape, physical and mental suffering. Trial Chamber II found that Furundžija had committed war crime and found him guilty of this crime as a co-perpetrator. Furthermore, the Chamber held Furundžija responsible and guilty of aiding and abetting the war crime of outrages upon personal dignity, including rape, even though he did not personally commit the crime. His mere presence and actions were enough to constitute aiding and abetting commission of the crime.

[77] *Prosecutor v. Tadic*, (Case No. IT-94-1-A), ICTY T. Ch., Judgment 15 July 1999.

[78] *Prosecutor v. Furundzija,* (Case No. IT-95-17/1-T), ICTY T.Ch., Judgment 10 December 1998, para. 209 and 249; *Prosecutor v. Tadic*, (Case No. IT-94-1-A), ICTY T. Ch., Judgment 15 July 1999, para. 199; MIG 2017:11 p. 6.

[79] European Asylum Support Office, EASO, Exclusion: Articles 12 and 17 Qualification Directive [2011/95/EU] - A Judicial Analysis, 2016 p. 31 f; MIG 2017:11 p. 6. The Court also denied the applicants claim for family reunification to his son. The Court stated that the crime against humanity is a serious crime that commissions of those acts are considered as a threat against the interest of the society in general and against the peace and security of the State, see Article 23.3 of the Qualification Directive.

[80] MIG 2017:29, p. 7.

applicant had committed the crime. Therefore, the applicant was not excluded from refugee status or protection.[81]

As with the previous exclusion cases, the court in MIG 2017:29 referred to relevant international instruments and case law when examining exclusion for participation in international crimes. Furthermore, the court emphasized the essential effect international criminal law has on domestic criminal law – i.e. developing the legal field and its need to establish new legislation such as the Act on Criminal Responsibility for Genocide, Crime against Humanity and War Crimes (2014:406).[82]

4 Concluding Remarks

The purpose of the exclusion clause was to restrict fugitive criminals involved in the most serious international crimes from enjoying the core essence and benefits of the refugee system. Several authorities, including the courts in other countries, have confirmed that the most authoritative international instrument to consider when defining international crimes or determining individual responsibility for such crimes is the Rome Statute.[83] In addition, the international community shares the view that the Rome Statute is the main source in the field of international criminal law, both with regard to understanding the normative scope of international crimes and the rules on criminal liability. Hence, when justifying exclusion under Article 1 F (a), the Rome Statute is the fundamental international instrument used for guidance when interpreting the context of international crimes and issues of individual responsibility. This pattern has further inspired the Swedish migration courts when examining exclusion provisions in individual asylum cases.[84] By analyzing the Swedish exclusion cases, it is clear that international conventions, agreements and case law have had a significant role when interpreting domestic exclusion provisions. The definitions of international crime correspond to the definition of crimes regulated in domestic legislation. This is why the Migration Court of Appeal considered it necessary to refer to international instruments when applying rules of exclusion in a national context. Nevertheless, domestic criminal law has still a vital role when examining exclusion provisions, especially concerning the perpetration of "serious crimes" or "serious non-political crimes".

One of many interesting aspects of the exclusion clause concerns the unique interaction between the two separate legal fields – migration law and criminal law – that the clause triggers. The fact that the applicant has been excluded from refugee or subsidiary protection does not necessarily mean that the same person will be arraigned and convicted for those acts in a criminal law context. The reason is simply the different standards of proof within the two legal fields. The

---

81 MIG 2017:29, p. 9.

82 Prop. 2013/14:146, p. 231 FF; MIG 2011:24; MIG 2012:14; MIG 2017:11; MIG 2017:29, p. 6.

83 For example, *R (JS)(Sri Lanka)* (UKSC, 2010), *Tamil X* (NZSC, 2010), *Ezokola* (Can. SC, 2013), *Furundzija* Case No. IT-95-17/1-T), ICTY T.Ch., Judgment 10 December 1998 and *Tadic* (Case No. IT-94-1-A), ICTY T. Ch., Judgment 15 July 1999.

84 MIG 2011:24: MIG 2012:24; MIG 2017:11; MIG 2017:29.

standard of proof in the exclusion clause, "serious reasons for considering…" is lower than the standard in criminal law, "beyond any reasonable doubt…". Consequently, the volume of evidence required in the exclusion cases is not similar to that an actual criminal proceeding. However, this does not obviate the need to interpret the exclusion clause restrictively in the view of the tremendous consequences the applicant may suffer when excluded from refugee or subsidiary protection.[85]

A further interesting demarcation concerns the definition of "armed conflict". The Migration Court of Appeal has stated in several cases that the definition used in domestic migration law does not correspond to that in international humanitarian law. In fact, the court states that it seems to be impossible to find a definition in principle of the concept "armed conflict".[86] Despite its own statement, the Migration Court of Appeal has in previous cases framed different criteria to be met when determining whether a particular situation has emerged as an armed conflict. This defines armed conflict in domestic migration law in a narrower way than in international humanitarian law. Consequently, these diverging sets of criteria may raise issues in different regards. At a first glance one could simply view these criteria presented by the Migration Court as a unified definition of the concept "armed conflict".[87] However, interpreting two different notions of the concept "armed conflict" in migration law on the one hand and in international humanitarian law on the other could cause two dissimilar outcomes; these could lead to deviation from criminal law and threaten legal certainty. For instance, a potential scenario could be the following. An applicant can be refused his or her claim for subsidiary protection under a migration court rule that there was no armed conflict as defined in migration law.[88] With a different definition of armed conflict, the same person can, at the

---

85 Prop. 2009/10:31, p. 261 and 262; UNHCR handbook, p. 44, para 149; United Nations High Commissioner for Refugee (UNHCR), Guidelines on International Protection: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees, HCT/GIP/03/05, 4 September 2003, p. 2, para. 2.

86 The Migration Court of Appeal, UM 133-09, Judgment 6 October 2009, p. 14; The Migration Court of Appeal, UM 334-09, Judgment 6 October 2009, p. 15; MIG 2009:27. Since there is no clear definition of the term "armed conflict" in international humanitarian law, guidance can be drawn from the 1949 Geneva Conventions and the two additional protocols, other humanitarian rules and case law. A number of important parts of the regulations deal with international armed conflicts and constitute today customary international law, which amounts to extended scope, Klamberg, Mark, *Gränsdragningen mellan utlänningslagen och svensk straffrätt beträffande internationella brott*, Juridisk Tidskrift 2012-13, no. 2, 286, p. 288; Stern, Rebecca, Folkrätten i svensk migrationsrätt – en resurs som utnyttjas?, i Stern, Rebecca & Österdahl, Inger, *Folkrätten i svensk rätt*, (eds), Malmö: Liber, 2012, p. 47.

87 The Court has found that these criteria must be met; (a) "disputes shall exist between the armed forces of a State and other organized armed groups"; (b) "these disputes shall attain a certain degree of intensity"; (c) "the armed groups shall have territorial control to the extent that they can carry out military service" and (d) "the civilian population must be affected in a way that it considers to be impossible for them to live in the region", Klamberg, 2012-13, p. 289; MIG 2007:9.

88 Chapter 4 section 2 of the Aliens Act provide subsidiary protection because of an armed conflict.

same time, be successfully prosecuted for potential war crime pursuant to the definition used in criminal law and international humanitarian law.[89]

Even though several notions suggest differences rather than similarities between the two separate legal fields, interpretation and application of the exclusion clause would be impossible to justify without the influence of relevant provisions, principles, and cases of both international and domestic criminal law.

Bibliography

Egelman, Zoe, *Punishment and Protection, Two Sides of the Same Sword: The Problem of International Criminal Law under the Refugee Convention*, Harvard International Journey 2018, vol. 59, no. 2

Hathaway, C, James, *The Rights of Refugees Under International Law*, Cambridge: Cambridge University Press, 2005

Hathaway, C, James, & Foster, Michelle, *The Law of Refugee Status*, Cambridge: Cambridge University Press, 2014

Klamberg, Mark, *Gränsdragningen mellan utlänningslagen och svensk straffrätt beträffande internationella brott*, Juridisk Tidskrift 2012–13, no. 2, 286

Robinson, Nehemiah, *Convention relating to the Status of Refugees: Its History, Contents and Interpretation, A Commentary*, New York: Institute of Jewish Affairs, World Jewish Congress, 1953

Stern, Rebecca & Österdahl, Inger, *Folkrätten i svensk rätt*, (eds), Malmö: Liber, 2012

[89] Klamberg, 2012-13, p. 290 ff; Stern & Österdahl, 2012.

Comparative Outlook: Investigation and Prosecution in Scandinavia of International Crimes