

# The Criminalisation and Prosecution of International Core Crimes in Finland

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## 1 Introduction

In Finland, criminal law has traditionally been regarded as a core area of state sovereignty, and hence as a branch of law that should reflect national values and sentiments.<sup>1</sup> At the same time, the country has also been one that has ratified many international treaties, including treaties containing criminalisation obligations, such as the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention) and the four 1949 Geneva Conventions.<sup>2</sup> A method used to “implement” these obligations has – at least in the past – been to first look into the existing domestic criminal law to see whether it is possible to find provisions that sufficiently cover the deeds for which there are international criminalisation obligations.<sup>3</sup> Sometimes, however, new implementing legislation has been adopted. At times, this has happened with significant delay. For example, a law explicitly criminalising genocide was adopted in 1974, that is, around 15 years after the Finnish ratification of the Genocide Convention.<sup>4</sup> The crime of torture, on its part, found its way into the Finnish Criminal Code in 2010, that is, around 20 years after the Finnish ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>5</sup>

While the Finnish approach to criminal law traditionally has been very nationally oriented, the internationalisation and Europeanisation of criminal law that have taken place especially during and after the 1990s have significantly affected both the attitudes and the legislative practice within the country. Today, it is seen as increasingly important that the domestic criminal legislation is in full harmony with the country’s international obligations. This change in attitude has most notably been prompted by the proliferation of international criminal tribunals in the 1990s, with courts such as the International Criminal Tribunal for the Former Yugoslavia (ICTY) crystallising the content of customary

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<sup>1</sup> See Kimpimäki, Minna, “Taking International Criminal Law Seriously: A Decade of Finnish Criminal Legislation” in Thomas Elholm (ed.), *Liber Amicarum et Amicorum Karin Cornils: Glimt af Nordisk Straffrätt og Straffeprocessrett*, pp. 1-17, Copenhagen: Djøf, 2010, p. 4; Nuotio, Kimmo, *Rikosoikeuden koherenssi ja fragmentaatio: esimerkinä järjestäytyneen rikollisuuden määrittely*, Lakimies 2009, no. 7-8, 1154, p. 1154.

<sup>2</sup> Treaty Series of Finland (SopS) 7-8/1955 [regarding the 1949 Geneva Conventions]; SopS 4-5/1960 [regarding the 1948 Genocide Convention]. The 1949 Geneva Conventions refer to the Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field; Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea; Convention (III) Relative to the Treatment of Prisoners of War; and Convention (IV) Relative to the Protection of Civilian Persons in Time of War, all adopted in Geneva in 1949.

<sup>3</sup> See, however, Governmental Bill 241/1973 where it is emphasised that it is not enough that some underlying offences of genocide already are characterised as criminal under general criminal law. Governmental Bill 241/1973 [on legislation regarding the punishment of crimes against humanity], p. 8.

<sup>4</sup> Finland ratified the convention in 1959. See Law no. 557/1959 [on the approval of certain provisions in the Convention on the Prevention and Punishment of the Crime of Genocide]; Governmental Bill 241/1973, pp. 7-8; and Law no. 987/1974 [amending the Criminal Code].

<sup>5</sup> Law no. 990/2009 [amending the Criminal Code]. See further UN Doc. CAT/C/67/Add.1, Committee against Torture, Fourth Periodic Reports of States Parties Due in 2002, Finland, paras. 92-94; Kimpimäki, 2010, pp. 5-6.

international criminal law, and the International Criminal Court (ICC) developing the treaty law on international crimes. As will be considered further below, many significant amendments have been made to the Criminal Code of Finland since the mid-1990s.

During the last decade, international crimes have also found their way into Finnish courts most notably through cases prosecuted based on universal jurisdiction. In September 2009, Finland's first universal jurisdiction trial started in the small District Court of Porvoo. This case involved acts of genocide committed in Rwanda in 1994. After that, four cases concerning war crimes have been prosecuted in Finnish courts.<sup>6</sup> Numerous future cases are likely, as a survey conducted by the Finnish Broadcasting Company (YLE) gave forth that as of April 2019, there were at least 14 ongoing Police investigations regarding war crimes and/or terrorism.<sup>7</sup> In March 2020, the National Bureau of Investigation informed about a new case involving serious war crimes, which allegedly were committed in the Liberian Civil War (1999–2003).<sup>8</sup>

The goal of this article is to assess critically the extent to which the Finnish criminal law provisions regarding international crimes correspond to their international counterparts. Furthermore, a central aim is to examine the emerging Finnish case law regarding international crimes. The article focuses on the international core crimes, that is, genocide, crimes against humanity, war crimes and the crime of aggression.

## 2 Prerequisites for the Prosecution of International Crimes in Finland: Previous and Current Provisions in the Criminal Code

### 2.1 *The Three Major Amendments to the Criminal Code*

Shortly after the country's independence in 1917, a special penal code for the military was adopted in Finland.<sup>9</sup> The first more broadly applicable legislation

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<sup>6</sup> See further Sections 3.3-3.4.

<sup>7</sup> Jansson, Kaisu & Manninen, Johanna, *Jouni palasi Syyriasta hengissä, naisten epäiltiin värvänneen lapsensa – Ylen selvitys paljastaa, millaisia ovat terrorismitutkinnat Suomessa*, YLE, 3 April 2019, <<https://yle.fi/uutiset/3-10719565>>, checked 31 March 2020; Schulman, Michel, *CKP har utrett över 30 misstänkta krigs- och terrorbrott*, YLE, 3 April 2019 <<https://svenska.yle.fi/artikel/2019/04/03/ckp-har-utrett-over-30-misstankta-krigs-och-terrorbrott>>, checked 31 March 2020.

<sup>8</sup> The National Bureau of Investigation, *A Citizen of Sierra Leone Arrested by NBI on Suspicion of Serious Crimes in Liberia in 1999–2003*, 11 March 2020 <[https://www.poliisi.fi/about\\_the\\_police/press\\_releases/1/0/a\\_citizen\\_of\\_sierra\\_leone\\_arrested\\_by\\_nbi\\_on\\_suspicion\\_of\\_serious\\_crimes\\_in\\_liberia\\_in\\_1999\\_2003\\_88518?language=en](https://www.poliisi.fi/about_the_police/press_releases/1/0/a_citizen_of_sierra_leone_arrested_by_nbi_on_suspicion_of_serious_crimes_in_liberia_in_1999_2003_88518?language=en)>, checked 20 April 2020; Koskinen, Anu Leena & Palomaa, Antti & Niilola, Merja, *Tampereella pitkään asunut ulkomaalainen vangittiin epäiltynä sotarikoksista Afrikassa: Kapinallisjärjestö tuli tunnetuksi raaosta otteistaan*, YLE, 12 March 2020, <<https://yle.fi/uutiset/3-11253098>>, checked 30 March 2020.

<sup>9</sup> Law no. 71/1919 [Criminal Code of the Military]; Law no. 93/1920 [Law about Military Courts and about Trials in Them]. See also Kimpimäki, Minna, *Kansainvälinen rikosoikeus*, Helsinki: Kauppakamari, 2015, p. 72. Regarding the Finnish ratification of the 1949 Geneva Conventions, see Scheinin, Martin, *Ihmisoikeudet Suomen oikeudessa*, Helsinki: Suomalainen lakimiesyhdistys, 1991, pp. 144-146. See also Governmental Bills 71/1954 [on

criminalising violations of the international law of armed conflict was, however, not adopted before 1974 when a chapter called “Offences against Humanity” was introduced into the general Criminal Code of Finland (the law entered into force in March 1975).<sup>10</sup> This chapter included penal provision on war crime, petty warfare crime, violations of human rights, aggravated violation of human rights, and genocide. In the Governmental Bill preceding the adoption of the chapter, special reference was made to the Nuremberg trials, the Genocide Convention and the 1949 Geneva Conventions amongst others, and as such the new legislation clearly had an international background.<sup>11</sup> Besides this shared background, the crimes had according to the Governmental Bill in common that the aim with the provisions was to protect discriminated groups, not victimised individuals as such.<sup>12</sup> The chapter name reflected this thinking, but it was also chosen to stress the severity of the offences concerned.<sup>13</sup>

The Finnish legislation regarding international crimes was revised in 1995 as part of a largescale reform of the Criminal Code. After this revision, the Criminal Code contained provisions on warfare crime, aggravated warfare crime, petty warfare crime, violations of human rights in a state of emergency, aggravated violations of human rights in a state of emergency, genocide, and preparation of genocide. The penal provisions regarding international crimes were moved to Chapter 11 of the Criminal Code, which at the same time was renamed to “War Crimes and Offences against Humanity”.<sup>14</sup> The amendments were adopted at a point in time when, for example, the statute of the ICTY had been adopted, but the preparatory documents date back to 1993 and as such the 1995 law still largely reflected the post-World War II understanding of international criminal law.<sup>15</sup> A criminalisation of the breach of the prohibition of chemical weapons was added to Chapter 11 in 1997,<sup>16</sup> and a provision on breach of the prohibition of biological weapons in 2003.<sup>17</sup>

Finland ratified the Statute of the International Criminal Court in December 2000. Some amendments to the national legislation were made then, but regarding the crime definitions, it was felt that the legislation sufficiently corresponded to international law.<sup>18</sup> As will be considered further below, there

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the ratification of the 1949 Geneva Conventions] and 72/1954 [on amending the Criminal Code of the Military and the law about military trials], and Law no. 21/1955 [amending the Criminal Code of the Military].

<sup>10</sup> Law no. 987/1974 and Governmental Bill 241/1973, p. 4.

<sup>11</sup> Governmental Bill 241/1973, pp. 2 and 7.

<sup>12</sup> Governmental Bill 241/1973, pp. 1-2.

<sup>13</sup> Governmental Bill 241/1973, p. 2. See also Governmental Bill 94/1993 [on the second phase of the total renewal of the Criminal Code], p. 23.

<sup>14</sup> Law no. 578/1995 and Governmental Bill 94/1993, p. 25.

<sup>15</sup> See further e.g., Heikkilä, Mikaela, *Ett folkrättsligt perspektiv på kriminaliseringen av krigsförbrytelser, folk mord och brott mot mänskligheten i Finland*, *Tidskrift utgiven av Juridiska Föreningen i Finland* 2003, no. 4-5, 455.

<sup>16</sup> Law no. 351/1997 [amending the Criminal Code].

<sup>17</sup> Law no. 17/2003 [amending the Criminal Code].

<sup>18</sup> E.g., Council of Europe, *The Implications for Council of Europe Member States of the Ratification of the Rome Statute of the International Criminal Court: Progress Report* by

were, however, some notable differences between the Finnish and the international approach to the international crimes back then, and eventually the Criminal Code was amended in 2008 to ensure greater harmony with international law.<sup>19</sup> In this revision, the 1998 Rome Statute of the International Criminal Court (ICC Statute) and the ICC Elements of Crimes played a central role, but reference was also made to customary international law.<sup>20</sup> Significantly, however, as noted by Kimpimäki: “In Finland international crime definitions are not usually taken to the Penal Code as is, but are rather written according to the national standards.”<sup>21</sup> This means that there are still some differences between the international criminalisations and the Finnish ones. The Finnish domestic legislation regarding international crimes has since 2008 been complemented with a criminalisation of the crime of aggression in 2015 (entry into force in 2016).<sup>22</sup>

## 2.2 War Crimes

Law 987/1974 amending the Criminal Code contained provisions on war crime, warfare misdemeanour, aggravated war crime, violations of human rights, and aggravated violation of human rights that all were characterised as “crimes committed during war”.<sup>23</sup> Of these five types of war crimes, the Governmental Bill characterised war/warfare crimes as crimes that typically were committed “at the front”, whereas violations of human rights were held to be crimes generally committed more “in the background” and against civilians and other persons *hors de combat*.<sup>24</sup> As such, it can be said that an implicit distinction between Hague and Geneva war crimes was made in the 1974 law.<sup>25</sup> More specifically, the law defined as war crimes the use of means and methods of warfare that were defined as criminal in international treaties and other laws and

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Finland, 11 September 2001, Consult/ICC (2001) 13 rev, p. 4; Ministry of Justice, Rikoksista kansainvälistä oikeutta vastaan, työryhmämietintö 2006:8, p. 3; Parliament of Finland, Legal Affairs Committee, LaVL 16/2000, p. 3; Governmental Bill 55/2007 [on amending the Criminal Code regarding the provisions on war crimes and crimes against humanity], p. 3. See also Hannikainen, Lauri, Finland, Yearbook of International Humanitarian Law 2000 (2002), vol. 3, 498, p. 499; Nuutila, Ari-Matti, “RL 11: Sotarikokset ja rikokset ihmisyyttä vastaan” in Heinonen, Olavi et al. (eds), Rikosoikeus, pp. 559-579, 2nd ed., Helsinki: WSOY Lakitieto, 2002, p. 560.

<sup>19</sup> Law no. 212/2008 [amending the Criminal Code]; Governmental Bill 55/2007, p. 12.

<sup>20</sup> Governmental Bill 55/2007, pp. 12-13.

<sup>21</sup> Kimpimäki, 2010, p. 6. See also e.g., Governmental Bill 55/2007, pp. 13 and 22.

<sup>22</sup> Law no. 1718/2015 [amending the Criminal Code].

<sup>23</sup> Law no. 987/1974; Governmental Bill 241/1973, p. 2. See also Hannikainen, Lauri, “Implementation of International Humanitarian Law in Finnish Law”, in Hannikainen, Lauri et al. (eds), *Implementing Humanitarian Law Applicable in Armed Conflicts: The Case of Finland*, pp. 114-145, Dordrecht: Martinus Nijhoff Publishers, 1992, p. 114 ff.

<sup>24</sup> Governmental Bill 241/1973, p. 11.

<sup>25</sup> With the Law of Geneva, one refers to “a body of rules which protect victims of war” and with the Law of The Hague “those provisions which affect the conduct of hostilities”. Bugnion, François, *Droit de Genève et droit de La Haye*, International Review of the Red Cross 2001, vol. 83, no. 844, 901, p. 922.

customs of war binding on Finland (Section 1). The provision on violations of human rights, on its part, made reference to the international norms on the treatment of the wounded, sick, shipwrecked, prisoners of war and civilians that could be found in international treaties binding on Finland and in generally recognised principles of international law (Section 2). Whereas war crimes had to be committed as part of “acts of war”, human rights violations could be committed besides in war, also during armed conflicts and occupation. As such, the latter provision had a broader scope of application, presumably also covering violations committed in non-international armed conflicts.<sup>26</sup> Noteworthy is also that the aggravated forms of the crimes did not correspond to grave breaches in the 1949 Geneva Conventions, but rather followed the Finnish legislative tradition of qualified crime forms. According to the 1974 law, the crimes were aggravated when, for example, several people were put in mortal danger or serious damage was caused to the economy (Section 3).<sup>27</sup> A conviction for a warfare misdemeanour, on the other hand, could become topical in situations where the crime as a whole was to be considered as petty taken into account the consequences of the crime and the context in which it was committed.<sup>28</sup>

In the 1995 version of the Criminal Code the war crimes were renamed to “warfare crimes”<sup>29</sup> and the appendix “in state of emergency” was added to the provisions regarding violations of human rights. Only minor revisions to the substantive content of the provisions were, however, made.<sup>30</sup> The 1995 law provided that a person who in an act of war used a prohibited means of warfare or weapon, abused an international symbol designated for the protection of the wounded or the sick, or otherwise violated the provisions of an international agreement on warfare binding on Finland or the generally acknowledged and established rules and customs of war under public international law was to be sentenced for a warfare crime (Section 1).<sup>31</sup> The provision on human rights violations, on its part, stipulated that a person who violated or failed to comply with the rules on the protection of the wounded, the sick or the distressed, the treatment of prisoners of war and the protection of the civilian population, which according to the international agreements binding on Finland or the established rules of public international law are to be followed during war, armed conflict or occupation was to be sentenced for violation of human rights in a state of emergency (Section 4). The 1995 version of the Code also included aggravated crime forms for warfare crimes (Section 2) and human rights violations (Section 5), and a petty form of warfare crimes (Section 3). As the international criminal tribunals in the meantime had started to clearly differentiate between, on the one hand, war crimes in international armed conflicts (including grave breaches) and, on the other hand, war crimes in non-international armed conflicts (including

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<sup>26</sup> See Governmental Bill 241/1973, pp. 5-6; Governmental Bill 55/2007, p. 6.

<sup>27</sup> Governmental Bill 241/1973, p. 12.

<sup>28</sup> Governmental Bill 241/1973, p. 11. See also Governmental Bill 94/1993, p. 28.

<sup>29</sup> In Finnish, the 1995 version of the law uses the concept “sodankäyntirikos” (warfare crime), whereas the 2008 version uses the concept “sotarikos” (war crimes).

<sup>30</sup> See e.g., Governmental Bill 94/1993, pp. 27-30.

<sup>31</sup> Official English translation of the 1995 version of the Criminal Code can be found at <<https://www.finlex.fi/fi/laki/kaannokset/1889/en18890039>>, checked 14 April 2020.

common Article 3 violations), the way in which war crimes were criminalised and categorised internationally and in Finland differed significantly during the late 1990s and early 2000s.<sup>32</sup> As the Finnish provisions, however, were very openly formulated with references to both treaty law and international customary law, they resulted in very comprehensive war crime criminalisations. This open and referring method to criminalise could, however, be criticised from the point of view of the principle of legality, which demands both specificity and foreseeability from criminal law provisions.<sup>33</sup>

In 2008, Finland made its last major revision regarding the criminalisation of war crimes. In that revision, the division between warfare crimes (*sodankäyntirikos*) and violations of human rights was abandoned, and the concept of “war crimes” (*sotarikos*) was reintroduced.<sup>34</sup> The current provision on war crimes applies to persons “who in connection with war or other international or domestic armed conflict or occupation”<sup>35</sup> commits certain explicitly criminalised acts (subparagraphs 1–14), which criminal nature derive from the 1949 Geneva Conventions, the 1977 additional protocols or “other rules and customs of international law on war, armed conflict of occupation”. The new war crime provision is much more specific than the 1974 and 1995 versions most notable due to the fact that it contains the list of possible ways to commit war crimes. Besides this list, the provision, however, also has a subparagraph which makes reference to Article 8 in the ICC Statute and customary international law, and which establishes that a person who “in another manner violates the provisions of an international agreement on war, armed conflict or occupation that is binding on Finland or the generally recognized and established laws and customs of war in accordance with international law shall be sentenced for a war crime.”<sup>36</sup> With this reference to international law, it is ensured that all acts that are internationally criminalised as war crimes also are criminal in Finland. Noteworthy is, however, that the Finnish criminalisation of war crime in certain situations is broader than the international one, as all war crimes in Finland also can be committed in non-international armed conflicts.<sup>37</sup> Remarkable is also that the Finnish Criminal Code, for example, explicitly criminalises taking or

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<sup>32</sup> On the development of war crimes in international law see e.g., Cullen, Anthony, “War Crimes” in Schabas, William A. & Bernaz, Nadia (eds.), *Routledge Handbook of International Criminal Law*, pp. 139-153, London: Routledge, 2011; and Mettraux, Guénaël, *International Crimes and the Ad Hoc Tribunals*, Oxford: Oxford University Press, 2005, p. 23 ff. As an example of a difference, one may note that in the Governmental Bill, it is pointed out that “violations of human rights in a state of emergency” essentially corresponded to the grave breaches in the 1949 Geneva Conventions. Governmental Bill 94/1993, p. 29. Such violations could also be committed in non-international armed conflicts. In international law, on the other hand, grave breaches are a special kind of war crimes that only can be committed in international armed conflicts. See e.g., ICC Elements of Crimes.

<sup>33</sup> Governmental Bill 55/2007, p. 12.

<sup>34</sup> Law no. 212/2008; Governmental Bill 55/2007, pp. 26-27.

<sup>35</sup> This formulation entails a nexus requirement for war crimes in Finland. Governmental Bill 55/2007, p. 27.

<sup>36</sup> Criminal Code of Finland, Chapter 11, Section 5. See also Governmental Bill 55/2007, pp. 26-30.

<sup>37</sup> Criminal Code of Finland, Chapter 11, Section 5; Governmental Bill 55/2007, pp. 26-27.

recruiting children below the age of 18 years into military forces or into groups in which they are used in hostilities, which deviates from the ICC Statute where the age limit is 15.<sup>38</sup> This is an example of a conscious Finnish choice to depart from the international legal model. In contrast to its international counterparts, the Criminal Code of Finland also continues to make a distinction between “ordinary”, aggravated and petty war crimes.<sup>39</sup>

### **2.3 Genocide**

Finland ratified the Genocide Convention in 1959, but until the entry into force of the 1974 law, the Criminal Code of Finland did not include an explicit criminalisation of genocide.<sup>40</sup> In the Governmental Bill preceding this amendment, it was stated that genocide also can be committed during peacetime and that the aim of the criminalisation was to protect “such parts of the population or population groups that clearly differ from those in power or the population group favoured by those in power.”<sup>41</sup> The 1974 crime definition followed more or less verbatim the Genocide Convention’s definition of genocide.<sup>42</sup>

The Finnish genocide criminalisation was modified in 1995, after which Section 6 of Chapter 11 of the Criminal Code provided that: “A person who for the purpose of entirely or partially destroying a race, a national, ethnic or religious group or another comparable group (1) kills members of the group; (2) inflicts grievous bodily or mental damage or illness to members of the group; (3) takes forcible measures to prevent procreation among the group; (4) forcibly moves children from one group to another; or (5) in another comparable manner essentially impairs the survival of the group shall be sentenced for genocide [...]” A significant modification was that the scope of the provision was extended to protect other comparable groups, which according to the Governmental Bill, for example, included language groups and political groups.<sup>43</sup> The list of possible ways to commit genocide was also made non-exhaustive by adding “in another comparable manner impairs the survival of the group” into the list of possible acts of genocide.<sup>44</sup> These two amendments made the Finnish criminalisation broader than the international one. Also regarding the other possible ways to commit genocide, the 1995 version of the Criminal Code sometimes chose slightly different wordings that the Genocide Convention, for

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<sup>38</sup> Criminal Code of Finland, Chapter 11, Section 5(1)(5) and ICC Statute, Articles 8(2)(b)(xxvi) and 8(2)(e)(vii). See also Governmental Bill 55/2007, p. 28 (referring to the Convention on the Rights of the Child and the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict).

<sup>39</sup> Criminal Code of Finland, Chapter 11, Sections 5-7.

<sup>40</sup> Law no. 557/1959; Governmental Bill 241/1973, pp. 7-8; and Law no. 987/1974.

<sup>41</sup> Governmental Bill 241/1973, p. 8 [translation to English by author].

<sup>42</sup> Governmental Bill 241/1973, p. 12.

<sup>43</sup> Governmental Bill 94/1993, p. 31.

<sup>44</sup> Governmental Bill 94/1993, p. 31.

example, also explicitly criminalising the causing of bodily or mental illness.<sup>45</sup> Lastly, it should be observed that the genocide definition in the statutory text of 1995 did not contain an express requirement that the group had to be destroyed “as such”. Based on the preceding Governmental Bill, it is, however, evident that genocidal intent despite this was a central crime element for the crime.<sup>46</sup>

In the 2008 revision, the list of possible ways to commit genocide was again made exhaustive to make the crime definition more in line with international law. In the preceding Governmental Bill, it was also noted that the ICC Elements of Crimes shall be considered when the Finnish genocide criminalisation is interpreted.<sup>47</sup> Section 1 of Chapter 11 of the Criminal Code of Finland now stipulates that: “A person who for the purpose of entirely or partially destroying a national, ethnic, racial or religious group or another comparable group (1) kills members of the group, (2) inflicts grievous bodily or mental illness or injuries on members of the group, (3) subjects the group to such living conditions that can cause the physical destruction of the group in whole or in part, (4) undertakes forcible measures to prevent procreation among the group, or (5) forcibly moves children from one group to another, shall be sentenced for genocide [...]” Noteworthy is thus that some significant differences between the ICC definition and the Finnish definition were maintained. Most notably, Finland opted for continuing to protect also other comparable groups in the domestic setting.<sup>48</sup> Also the explicit mentioning of causing bodily or mental *illness* was kept in the law.<sup>49</sup>

## 2.4 Crimes against Humanity

The 1974 and 1995 amendments to Criminal Code did not introduce into Finnish law a criminal law provision that would correspond to what *today* is understood with crimes against humanity in international law, that is, a crime that would have as its characterising feature that certain prohibited acts are committed as part of a widespread or systematic attack directed against a civilian population.<sup>50</sup>

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<sup>45</sup> Law no. 578/1995; Governmental Bill 94/1993, p. 31.

<sup>46</sup> Governmental Bill 94/1993, p. 31. The 1974 version of the law refers to destruction “as a group”, but in later versions of the law the international concept of “as such” has been left out as it has been felt that this requirement is inherent in the whole genocide criminalisation and as such implicit. Governmental Bill 241/1973, p. 8; Governmental Bill 94/1993, p. 31; and Governmental Bill 55/2007, pp. 19-20. In the official Finnish translation of the ICC Statute as such (“tässä sen ominaisuudessa”) is, however, included. SopS 56/2002 [on ratification of the Rome Statute of the International Criminal Court].

<sup>47</sup> Governmental Bill 55/2007, p. 20.

<sup>48</sup> Governmental Bill 55/2007, p. 19.

<sup>49</sup> Governmental Bill 55/2007, p. 20.

<sup>50</sup> Or another way to put it is that, the 1974 and 1995 versions of the Criminal Code followed the Nuremberg Tribunal’s understanding of crimes against humanity, which today essentially corresponds to war crimes committed against own nationals. Governmental Bill 241/1973, p. 2 (see also pp. 3-6). Also cf. Governmental Bill 55/2007, p. 5. With aggravated violation of human rights the Finnish legislator, however, referred to more systematic and large-scale violations, and as such that provision could maybe have been used to prosecute some crimes against humanity. Governmental Bill 241/1973, p. 12.

Even though the 1974 and 1995 laws in the chapter titles referred to “crimes against humanity”, they did hence not contain such a criminalisation, but only provisions on war crimes and genocide. In the 2008 revision of the Code, the crime of “crimes against humanity” was eventually added, and this criminalisation was largely modelled after its ICC equivalent.<sup>51</sup> In the Governmental Bill preceding the adoption of the amending law, it was also emphasised that the ICC Elements of Crimes should be considered when the crime elements of crimes against humanity are interpreted.<sup>52</sup> Section 3 of Chapter 11 of the Finnish Criminal Code now provides that:

A person who, as part of a broad or systematic assault on civilian population, (1) kills or enslaves another, subjects him or her to trade by offer, purchase, sale or rent, or tortures him or her, or in another manner causes him or her considerable suffering or a serious injury or seriously harms his or her health or destroys a population by subjecting it or a part thereof to destructive living condition or in another manner, (2) deports or forcibly transfers population lawfully residing in an area, (3) takes a person as a prisoner or otherwise deprives him or her of his or her liberty in violation of fundamental provisions of international law or causes the involuntary disappearance of a person who has been deprived of his or her liberty, (4) rapes another, subjects him or her to sexual slavery, forces him or her into prostitution, pregnancy or sterilization or commits other corresponding aggravated sexual violence against him or her, (5) engages in racial discrimination or persecutes a recognizable group or community on the basis of political opinion, race, nationality, ethnic origin, culture, religion or gender or on other comparable grounds, shall be sentenced for a crime against humanity [...].

According to the current international understanding of crimes against humanity, crimes against humanity can be committed both during armed conflicts and in peacetime.<sup>53</sup> In this regard, the crime deviates from war crimes that have to take place in the context of and be associated with an armed conflict.<sup>54</sup> The Finnish Criminal Code follows this distinction in that whereas war crimes have to be committed “in connection with a war or other international or domestic armed conflict or occupation”, the central *chapeau* element in crimes against humanity is that they are committed “as part of a broad or systematic assault on civilian population”.<sup>55</sup> The list of possible ways to commit crimes against humanity has on purpose been formulated a bit differently in Finnish law to make the provision adhere to the Finnish way of writing penal provisions.<sup>56</sup> To a large extent the

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<sup>51</sup> Law no. 212/2008; Governmental Bill 55/2007, p. 21.

<sup>52</sup> Governmental Bill 55/2007, p. 22.

<sup>53</sup> See further e.g. Sadat, Leila Nadya, *Putting Peacetime First: Crimes Against Humanity and the Civilian Population Requirement*, *Emory International Law Review* 2017, vol. 31, 197, p. 200; Schabas, William A., *The International Criminal Court: A Commentary on the Rome Statute*, 2nd ed., Oxford: Oxford University Press, 2016, pp. 168-171.

<sup>54</sup> cf. e.g. ICC Elements of Crimes regarding war crimes.

<sup>55</sup> Criminal Code of Finland, Chapter 11, Sections 3 and 5.

<sup>56</sup> Governmental Bill 55/2007, p. 22. See also Kimpimäki, 2015, pp. 99-100.

Finnish provision, however, allows the punishment of the same acts as its international counterparts in the ICC Statute and customary law.<sup>57</sup>

One significant difference between Finnish and international criminalisation of crimes against humanity is that the Finnish Criminal Code distinguishes between “ordinary” crimes against humanity and aggravated crime against humanity, whereas in international law the gravity of the crime against humanity is not considered until the sentencing stage.<sup>58</sup> Based on Finnish law, a crime against humanity is aggravated when it is directed against a large group of persons, it is committed in an especially brutal, cruel or degrading manner, or it is committed in an especially planned or systematic manner, and the crime when assessed as a whole is to be considered grave.<sup>59</sup> In contrast to the criminalisation of war crimes, the Criminal Code of Finland does not have a provision on petty crimes against humanity.

## 2.5 *Crime of Aggression*

In the Nuremberg trials following the Second World War, crimes against peace was one of the crimes the accused could be convicted for.<sup>60</sup> This crime, which is the predecessor of today’s crime of aggression, has traditionally not had an equivalent in the Criminal Code of Finland. As will be discussed further below, highly controversial war responsibility trials were, however, held in Finland in the 1940s.<sup>61</sup> A criminalisation of the crime of aggression was eventually adopted in 2015,<sup>62</sup> even though the possibility had been considered earlier. The reason for this delay was that it was felt that such a criminalisation would entail “legislative problems” and it was furthermore not considered to be absolutely necessary.<sup>63</sup> After the adoption of the 2010 Kampala amendments to the ICC Statute and the Finnish decision to ratify these amendments, a need to reconsider this viewpoint, however, emerged.

The Finnish criminalisation of the crime of aggression follows closely the international one, although some minor linguistic modifications have been made to synchronise the provision with the traditional Finnish way to formulate penal provisions.<sup>64</sup> In the same way as the ICC definitions, the Finnish criminalisation

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<sup>57</sup> To mention a difference, the Finnish penal provision is e.g. broader regarding persecution. Governmental Bill 55/2007, p. 23.

<sup>58</sup> ICC Statute, Article 78.

<sup>59</sup> Criminal Code of Finland, Chapter 11, Section 4; Governmental Bill 55/2007, p. 25.

<sup>60</sup> Charter of the International Military Tribunal (Nuremberg) (1945), Article 6.

<sup>61</sup> Law no. 890/1945 [on the punishment of those guilty of war guilt], Section 1.

<sup>62</sup> Law no. 1718/2015 [amending the Criminal Code]. See also Governmental Bill 289/2014 [on approving the Kampala Amendments to the Statute of the International Criminal Court], p. 9.

<sup>63</sup> Governmental Bill 94/1993, p. 25

<sup>64</sup> Criminal Code of Finland, Chapter 11, Section 4 a; Governmental Bill 289/2014, p. 27. The provision provides that: “If a person, who is in a position effectively to exercise control over or to direct the political or military action of a State, commits an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations [...] the person shall be sentenced for a *crime of aggression* [...] An act of aggression

is limited to the use of *armed force*,<sup>65</sup> and the crime has been formulated as a leadership crime.<sup>66</sup>

## **2.6 Concluding Observations Regarding the Crime Definitions**

All in all, the current version of the Criminal Code of Finland is largely in harmony with international law. In certain situations, the Finnish law uses slightly different wordings in the crime definitions, and sometimes also expands the scope of the criminalisations. From the perspective of the complementarity principle, these minor differences are unlikely to cause any problems. In situations where individuals are prosecuted based on universal jurisdiction,<sup>67</sup> the existence of national deviations, however, give rise to a need to check the extent to which the acts prescribed as criminal in domestic law also are internationally criminal. In Finland, such checks are particularly important in situations where the 1974 and 1995 versions of the Criminal Code are used in prosecutions, as these versions of the legislation to a greater extent depart from the international law models.

## **3 Case Law Regarding International Crimes in Finland**

### **3.1 Introductory Note**

When the Criminal Code was modified in 1995, it was noted that no trials had been held based on the 1974 version of the Criminal Code as regards war(fare) crimes, violations of human rights and genocide.<sup>68</sup> For a long time, many of the provisions in Chapter 11 of the Criminal Code were indeed regarded as such that were highly unlikely to be used in practice. Today, this viewpoint cannot, however, be maintained anymore, as there has already been a number of trials in Finland involving international crimes. In the following, the post-World War II trials as well as some more recent cases prosecuted based on universal jurisdiction will be analysed.

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means the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations. Such acts are, regardless of a declaration of war in accordance with United Nations General Assembly resolution 3314 (XXIX) of 14 December 1974, the following acts by a State or its armed forces [...; list of examples].” [translation to English by author with reference to the ICC Statute].

<sup>65</sup> Governmental Bill 289/2014, p. 27.

<sup>66</sup> Governmental Bill 289/2014, pp. 21-23.

<sup>67</sup> It should be noted that the crime of aggression has not been defined as a crime to which universal jurisdiction applies. Governmental Bill 289/2014, pp. 24-25.

<sup>68</sup> Governmental Bill 94/1993, p. 25.

### 3.2 Cases Involving Crimes Committed During World War II

During the Second World War, Finland was involved in two armed conflicts against the Soviet Union (Winter War 1939-40 and Continuation War 1941-44) and one conflict against Germany (Lapland War 1944-45). The extent to which crimes were committed by Finns during these wars and the more general conflict is disputed. For example, in 2019 a much debated study on the involvement of Finnish SS Volunteers in war crimes was published.<sup>69</sup> It is, however, clearly established that, for example, during the Continuation War, numerous Soviet prisoners died in Finnish prison camps due to malnutrition, diseases and sometimes also executions.<sup>70</sup> Acts that today would be characterised as international crimes were thus for sure committed, but in the imminent post-World War context, the question of criminal responsibility was nonetheless both controversial and highly political.

The Moscow Armistice (1944) that ended the Continuation War required Finland to “collaborate with the Allied powers in the apprehension of persons accused of war crimes and in their trial” (Article 13).<sup>71</sup> The implementation of this provision was supervised by the Allied Control Commission that from 1944 to 1947 oversaw the armistice agreement, that is, in practice the Soviet authorities.<sup>72</sup> During the years 1944-48, over 700 persons were convicted in Finland for crimes committed during the Continuation War, and many of these cases involved crimes committed in the prison camps.<sup>73</sup> The trials were conducted based on domestic Finnish law, and in many cases they were also initiated by the Finnish authorities themselves. There were, however, also some cases where the Soviet authorities pressured the Finnish authorities to act, and which therefore had a political nature.<sup>74</sup>

The question whether Article 13 only required the prosecution of “ordinary” war crimes, or also the prosecution of the political leadership for war guilt, was initially unclear.<sup>75</sup> The establishment of the Nuremberg Tribunal, and the various trials that were held against the leaders of the Axis powers, however, led to increased political pressure to also prosecute the Finnish political leadership.<sup>76</sup> As a result of this, the Finnish Parliament in September 1945 adopted a special

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<sup>69</sup> Westerlund, Lars, *The Finnish SS-Volunteers and Atrocities 1941–1943*, Helsinki: Finnish Literature Society, 2019.

<sup>70</sup> See e.g. Kujala, Antti, *Vankisurmat: Neuvostosotavankien laittomat ampumiset Jatkosodassa*, Helsinki: WSOY, 2008.

<sup>71</sup> On the history of this provision, see e.g., Hyvämäki, Lauri, *Lista I:n vangit*, Helsinki: Tammi, 1983, pp. 18-19.

<sup>72</sup> In the Paris Peace Treaty between Finland and the Allies (1947), the obligation to prosecute was reaffirmed in Article 9(1). SopS 20/1947.

<sup>73</sup> Kujala, 2008, p. 11.

<sup>74</sup> See, e.g. Hyvämäki, 1983.

<sup>75</sup> Hyvämäki, 1983, pp. 18-19.

<sup>76</sup> It has been argued that the London Agreement changed the attitude of the Control Commission towards the Finnish war guilt question, and that the London Agreement therefore can be regarded as a central background factor to the Finnish war guilt law. Lindstedt, Jukka & Löytömäki, Stina, *Sotasyyllisyysoikeudenkäynti*, Oikeusministeriö, Selvityksiä ja ohjeita 22/2010, pp. 22-23 and 53-54 (referring to e.g., Polvinen and Tarkka).

law on war guilt. This law, which allowed for the punishment of those that had in a decisive manner influenced Finland in getting into a war with the Soviet Union and United Kingdom or for preventing peace, was extremely controversial due to its perceived political and retroactive nature.<sup>77</sup> As a result of the 1945 law, a trial was, however, held in 1945-46 in a special court against eight leading politicians, including President Risto Ryti and the Finnish Ambassador to Nazi Germany. All accused were eventually convicted for the “abuse of official position for the detriment of the country”. Interestingly, the trial did not only have crime against peace (aggression) as its focal point, but also included many charges regarding the prevention of peace, which Tallgren has called a “Finnish particularity”.<sup>78</sup> The Allied intervened, sometimes flagrantly, in the work of the special court, and, for example, hindered the Court from acquitting some of the accused.<sup>79</sup> As such, the legacy of the trial has been tampered by its highly political context.

### 3.3 *The Bazaramba Case on Genocide*

In many European countries, the Balkan Conflict in the 1990s resulted in war crime trials based on the principle of universal jurisdiction. In Finland, no such trials have materialised.<sup>80</sup> Instead, Finland’s first universal jurisdiction case, the *Bazaramba* case, addressed crimes committed during the 1994 genocide in Rwanda. According to the charges brought in 2009: “Bazaramba was one of the most important leaders of the genocide in Nyakizu commune.”<sup>81</sup> More specifically, he was accused of having participated in the genocide in the form of killings and inflicting on Tutsis living conditions calculated to bring about their physical destruction in whole or in part.<sup>82</sup>

The *Bazaramba* case was tried based on the 1974 genocide definition, as that was the version of the Criminal Code of Finland that was in force when the alleged crimes were committed, and as the version of the Criminal Code that was in force at the time of the trial did not lead to more lenient outcomes.<sup>83</sup> The

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<sup>77</sup> Law no. 890/1945. See, e.g. Tallgren, Immi, “The Finnish War-Responsibility Trial in 1945-6: The Limits of Ad Hoc Justice” in Heller, Kevin Jon & Simpson, Gerry (eds.), *The Hidden Histories of War Crimes Trials*, pp. 430-454, Oxford: Oxford University Press, 2013, pp. 436-437.

<sup>78</sup> Tallgren, 2013, p. 439. See also Kekkonen & Löytömäki, 2010, p. 45; and Tarkka, Jukka, *13. artikla: Suomen sotasyllisyyskysymys ja liittoutuneiden sotarikospolitiikka vuosina 1944-1946*, Helsinki: WSOY 1977, pp. 181-182, 219-221, and 246.

<sup>79</sup> Tallgren, 2013, pp. 440 and 442 (referring to Polvinen and Tarkka).

<sup>80</sup> A case concerning alleged war crimes committed by a mercenary in Bosnia was, for example, closed due to lack of evidence. Himberg, Petra, *Persona non grata: Marco Casagrande*, YLE, 23 February 2010, <<https://yle.fi/aihe/artikkeli/2010/02/23/persona-non-grata-marco-casagrande>> (checked 13 February 2020).

<sup>81</sup> *Prosecutor v. François Bazaramba*, District Court of Itä-Uusimaa, Case R 09/404, Judgment 11 June 2010 (official English translation of the judgment), p. 5 (para. 3.1.4).

<sup>82</sup> *Bazaramba*, 11 June 2010, pp. 5-8. The case also included alternative charges for murder. *ibid.*, pp. 8-10.

<sup>83</sup> *Bazaramba*, 11 June 2010, pp. 4 and 28-29.

District Court of Porvoo, where the case was tried in the first instance, however, held that due to the fact that “all of the acts in the charge were committed abroad and the defendant as well as the victims are also all foreign nationals” international sources of law should be given an “interpretational effect”.<sup>84</sup> The District Court noted, regarding genocide, that: “fulfilment of the constituent elements of the crime of genocide requires the existence of specific intent, *dolus specialis*. The perpetrator must have committed the act enumerated in the constituent elements because the object of the act belongs to a certain group which the perpetrator wishes to destroy in whole or in part.”<sup>85</sup> As the District Court convicted Bazaramba for genocide, it came to the conclusion that he had such an intent, but as noted by Kimpimäki it “does not clarify in detail how it came to this conclusion.”<sup>86</sup>

In its judgment, the District Court considered different instances of killings and living conditions calculated to bring about the physical destruction of the Tutsis. As regards the killings, the Court found some charges as proven and others as not proven.<sup>87</sup> Regarding living conditions calculated to bring about the physical destruction, the District Court assessed instances of dissemination of anti-Tutsi propaganda, the organisation of roadblocks and night patrols, measures forcing Tutsis to leave their homes and destroying homes, and the distribution of Tutsi property to Hutus.<sup>88</sup> In its judgment, the Court concentrated on assessing the factual evidence, rather than on considering how the different legal elements of genocide should be interpreted.<sup>89</sup> One of the few legal questions that was expressly considered was whether genocide requires a plan in advance, and with reference to, *inter alia*, the ICTY *Jelisić* Appeal Judgment, the District Court dismissed the existence of such a requirement.<sup>90</sup>

An especially interesting aspect of the *Bazaramba* judgment is how the District Court approached the question of what constitutes acts calculated to bring about the physical destruction of a population group. As noted above, the Court in this context among other things considered the dissemination of

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<sup>84</sup> *Bazaramba*, 11 June 2010, p. 29 (“The points of departure in Finnish criminal proceedings are always the application of the Finnish Criminal Code and the use of Finnish sources of law. Since in the manners recounted above, the genocide trial may be deemed to have a heightened international nature, the District Court has also studied the development and dogmatics of international criminal law as well as the case law of international criminal courts and tribunals.”).

<sup>85</sup> *Bazaramba*, 11 June 2010, p. 28.

<sup>86</sup> Kimpimäki, Minna, *Genocide in Rwanda – Is It Really Finland’s Concern?*, International Criminal Law Review 2011, vol. 11, 155, pp. 162-163 (“it seems that the district court based its conclusions concerning specific intent on the general context of the actions, the statements of the accused, the fact that all the acts were directed against one and the same group and the fact that the victims were targeted on account of their membership in a particular group. These are facts and circumstances which international criminal tribunals have also accepted as means to establish specific intent.”).

<sup>87</sup> *Bazaramba*, 11 June 2010.

<sup>88</sup> *Bazaramba*, 11 June 2010, p. 6.

<sup>89</sup> Kimpimäki, 2011(a), p. 160.

<sup>90</sup> *Bazaramba*, 11 June 2010, pp. 30-31. Kimpimäki, 2011(a), p. 163. This conclusion was upheld by the Court of Appeal. *Prosecutor v. François Bazaramba*, Helsinki Court of Appeal, Case R 10/2555, Judgment 30 March 2012, p. 21.

propaganda and the organisation of roadblocks. Kimpimäki has pointed out that this deviates from the practice of the International Criminal Tribunal for Rwanda (ICTR), which generally has considered hate speech and roadblocks as crimes against humanity, and where the acts intended to bring about the physical destruction of the population group often have been more closely related to the causing of deaths, such as deprivation of food or medicines, or expulsions from homes.<sup>91</sup> Also the ICC Elements of Crimes mention these three factors as examples of thinkable conditions of life calculated to bring about the physical destruction of a group.<sup>92</sup> A possible reason for the Finnish authorities choice to prosecute and convict these acts as genocide, rather than as crimes against humanity, may be that at the time of the commission of the crimes, crimes against humanity was not explicitly criminalised in Finnish law.<sup>93</sup> The District Court convicted Bazaramba to imprisonment for life.<sup>94</sup>

In the same way as the District Court, the Helsinki Court of Appeal that tried the *Bazaramba* Case in the second instance largely focused on evaluating the trustworthiness of the evidence.<sup>95</sup> The Appeals Chamber judgment, however, includes some sections in which the law is considered more closely. Regarding the specific intent, the Appeals Court with reference to the doctrine noted that it can be proven with circumstantial evidence, such as the fact that the acts of the accused take place in a context where a large number of victims from a certain population group is targeted. In relation to Bazaramba, the Court of Appeal held that his own hate speeches reinforce the conclusion that he acted with genocidal intent.<sup>96</sup> In relation to the expulsion from homes, the Court with reference to ICTR case law found that such acts can be considered as acts intended to bring about the physical destruction of the population group.<sup>97</sup> The Court of Appeal, in the same way as the District Court, found Bazaramba guilty of genocide and it also upheld the life sentence.<sup>98</sup>

### **3.4 Crimes Committed in Iraq (2014–15)**

Finnish courts have so far decided on four cases involving alleged war crimes committed in Iraq during the 2010s. The first of these cases was handled by the District Court of Pirkanmaa in March 2016. In that case, the defendant, who had fought as a member of the Kataeb Jund al-Imam brigade against the Islamic State of Iraq and the Levant (ISIS/ISIL) was accused of having published photos of himself with the dead body of a decapitated enemy soldier on Facebook in

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<sup>91</sup> Kimpimäki, 2011(a), p. 161.

<sup>92</sup> ICC Elements of Crimes, p. 3.

<sup>93</sup> Kimpimäki, 2011(a), p. 161. See also Kimpimäki, Minna, *Sotarikollisia ja merirosvoja – Suomen rikosoikeudellisen toimivallan rajat*, Lakimies 2011(b), no. 5, 888, pp. 895-897.

<sup>94</sup> *Bazaramba*, 11 June 2010, p. 112.

<sup>95</sup> *Bazaramba*, 30 March 2012, p. 18 ff.

<sup>96</sup> *Bazaramba*, 30 March 2012, p. 65.

<sup>97</sup> *Bazaramba*, 30 March 2012, p. 74.

<sup>98</sup> Most of the charges that the District Court found to be proven were hence upheld at appeal. *Bazaramba*, 30 March 2012, pp. 138-141.

January 2015.<sup>99</sup> The defendant did not deny the act, but argued that it did not constitute a punishable war crime.<sup>100</sup> The Prosecutor on his part found that it did so both based on the Criminal Code of Finland, and the ICC Statute (Article 8(2)(b)(xxi) or 8(2)(c)(ii)). The Court to begin with evaluated the nature of the armed conflict, and held that “based on the statement made by expert Paronen, there was a non-international armed conflict in Iraq at the point in time when the act took place.”<sup>101</sup> This way of establishing the existence of and type of armed conflict clearly deviates from the approach of the *ad hoc* tribunals and the ICC, where comprehensive factual evidence often is used to establish factors, such as the intensity of the fighting and the organisation of the parties, and the evaluations of the evidence often are clearly spelled out in the judgments.<sup>102</sup> With reference to the ICC Elements of Crimes, the District Court then made express pronouncements both of the facts that conduct took place in the context of and was associated with the armed conflict and that the perpetrator was aware of factual circumstances that established the existence of the armed conflict.<sup>103</sup> The District Court also considered the nature of the act and held that it constituted a criminal outrage upon personal dignity against a person *hors de combat*. The Court eventually convicted the defendant Jebbar-Salman for war crimes (Section 5 of the Criminal Code) to prison for one year four months and explicitly held that the acts of the defendant could not as a whole be regarded as petty (Section 7 on petty war crimes).<sup>104</sup>

Finland’s second war crimes case was in many ways very similar to the first one and it was adjudicated more or less simultaneously in the District Court of Kanta-Häme. The case also involved the publication of a picture in Facebook showing the accused posing with the head of a decapitated enemy soldier. This picture was taken in Iraq in March 2015, and the accused was a member of the Iraqi Special Operations Forces fighting against ISIS/ISIL.<sup>105</sup> Also in this case, the accused admitted to being the person in the picture and he also confessed to having published the picture on Facebook. The accused, however, underlined that he had not himself decapitated the dead enemy soldier and that his intention was to take care of the head so that, for example, wild dogs could not eat it. The defence also argued that the accused had grown up in a culture of violence and war that in many ways was different from the Finnish culture, and that this background should be considered when his act was legally evaluated.<sup>106</sup> In its judgment, the District Court started off by presenting the applicable law, and then moved on to discuss the evidence that had been presented regarding the

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<sup>99</sup> *Prosecutor v. Ammar Jebbar-Salman*, District Court of Pirkanmaa, Case R 16/1304, Judgment 18 March 2016, p. 2.

<sup>100</sup> *Jebbar-Salman*, 18 March 2016, p. 2.

<sup>101</sup> *Jebbar-Salman*, 18 March 2016, p. 2 [translation to English by author].

<sup>102</sup> See e.g., *Prosecutor v. Thomas Lubanga Dyilo*, ICC T. Ch. I, Judgment pursuant to Article 74 of the Statute, ICC-01/04-01/06-2842, 5 April 2012, paras 503-567.

<sup>103</sup> *Jebbar-Salman*, 18 March 2016, pp. 3-4.

<sup>104</sup> *Jebbar-Salman*, 18 March 2016, pp. 3-4.

<sup>105</sup> *Prosecutor v. Hadi Habeeb Hilal*, Case No. R 16/214, Judgment, District Court of Kanta-Häme, 22 March 2016, p. 1.

<sup>106</sup> *Hilal*, 22 March 2016, p. 2.

situation in Iraq and how these kinds of pictures often were used in the conflict.<sup>107</sup> In the part of the judgment where the Court made findings, it only shortly noted that the behaviour of the accused fulfilled the definition of outrages upon personal dignity and that there was a non-international armed conflict in Iraq at the point of time.<sup>108</sup> In contrast to the District Court in Pirkanmaa, the District Court in Kanta-Häme did hence not explicitly address all crime elements enumerated in the ICC Elements of Crimes, and most notably it did not elaborate on the nexus element of war crimes, that is, that the conduct was associated with an armed conflict and that the perpetrator was aware of factual circumstances that established the existence of such a conflict. Like the *Jebbar-Salman* case, the *Hilal* case also resulted in a conviction for war crimes. The sentence handed down was imprisonment for one year one month.<sup>109</sup>

There is also a third war crime trial case involving decapitation and publication of pictures on Facebook. This case was decided by the District Court of Helsinki in 2019, and it involved events that had taken place in Iraq in March 2015. The accused was a soldier in the Iraqi army fighting against ISIS/ISIL. In contrast to the two other cases, the accused was, however, also accused of having cut the head from the body and for posing in front of burning bodies. An additional difference to the two previous cases was that the accused denied that he himself had posted the material on social media.<sup>110</sup> In its judgment, the District Court noted that already the cutting of the head in itself constitutes outrages upon personal dignity, and that the other acts connected to that (posing with the head, posing in a situation where one can see burning dead bodies, and posting the material on Facebook) confirmed the conclusion of degrading treatment.<sup>111</sup> The Court did not find the claim that the material had been put online without his knowledge and consent convincing.<sup>112</sup> Also in this case that resulted in a war crime conviction, the nexus element of war crimes was given scant attention. The sentence in the case was imprisonment for one year six months.<sup>113</sup>

The fourth war crime trial that has been held in Finland involved more serious war crimes than the three previous ones. Accused in the case were two twin brothers from Iraq, who were accused of having participated as IS fighters in the mass killings and abuse in Camp Speicher in June 2014. The acts were prosecuted as aggravated war crimes, but also in the alternative as acts of terrorism. In its judgment, the District Court of Pirkanmaa focused on evaluating the presented evidence, and came to the conclusion that the charges had not been

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<sup>107</sup> *Hilal*, 22 March 2016, p. 5.

<sup>108</sup> Interestingly, also in this case explicit reference is made to witness Paronen. *Hilal*, 22 March 2016, p. 5.

<sup>109</sup> *Hilal*, 22 March 2016, p. 7.

<sup>110</sup> *Prosecutor v. Ahmed Jabbar Hasan*, Case No. R 18/6593, Judgment, District Court of Helsinki, 10 January 2019, pp. 1-6.

<sup>111</sup> *Hasan*, 10 January 2019, p. 7.

<sup>112</sup> *Hasan*, 10 January 2019, pp. 7-8.

<sup>113</sup> *Hasan*, 10 January 2019, p. 8.

proven beyond reasonable doubt.<sup>114</sup> This conclusion was upheld by the Court of Appeal.<sup>115</sup> Due to the lacking evidence, the courts did not find it necessary to elaborate on many of the interesting legal questions in the case, such as the distinction between war crimes and acts of terrorism.<sup>116</sup>

#### 4 Concluding Remarks

Like in many other countries, the proliferation of international criminal tribunals and the increased use of universal jurisdiction since the mid-1990s has changed the Finnish approach to international crimes. Legal amendments to the Criminal Code have entailed that there is today significant congruence between the Finnish and the international definitions of the international core crimes. The Finnish authorities have, however, at times chosen to deviate on purpose from the international definitions, but overall, these nonconformities are of minor scope.

As regards the emerging case law regarding the international crimes, it is possible to find both cases that have been prosecuted based on the current version of the Criminal Code and one case that has been prosecuted based on the 1974 version of the Criminal Code, viz. the *Bazaramba* case. It is also likely that the country soon has one case tried based on the 1995 version of the Criminal Code.<sup>117</sup> While the courts in the cases based on the current version of the law already in the charges refer to the ICC Statute, the legal relevance of the international sources of law is less clear in the cases prosecuted based on the older versions of the Code. In the *Bazaramba* case, the Court, however, held that the international sources can (at least in the context of cases prosecuted based on universal jurisdiction) be given an “interpretational effect”.<sup>118</sup> In order to avoid unnecessary fragmentation between Finnish and international law, more attention should, in fact, be paid *in all cases* to international law and practice. In some of the more recent war crimes cases where reference has been made to the ICC Statute, the nexus element of war crimes has, for example, largely been disregarded despite it being a central element of war crimes in international law. By clearly spelling out which crime elements have to be proven, and by always including explicit considerations whether the evidentiary thresholds regarding all the elements have been met, legal certainty could be improved and unnecessary fragmentation between international and domestic law avoided.

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<sup>114</sup> *Prosecutor v. Ahmad Shhab Hamad & Daham Shhab Hamad*, Case No. 16/6930, Judgment, District Court of Pirkanmaa, 24 May 2017.

<sup>115</sup> *Prosecutor v. Ahmad Shhab Hamad & Daham Shhab Hamad*, Case No. R 17/1229, Judgment, Appeal Court of Turku, 28 February 2020.

<sup>116</sup> See e.g., Esko, Anna, *Kansainvälinen oikeus, terrorismi ja sodankäynti*, Defensor Legis 2017, no. 1, 102, p. 112-113; Melander, Sakari & Scheinin, Martin, *Terroristit lietsovat pelkoa – KRP:n ei tulisi vastata samalla keinolla*, Perustuslakiblogi, 11 December 2015 <<https://perustuslakiblogi.wordpress.com/2015/12/11/sakari-melander-ja-martin-scheinin-terroristit-lietsovat-pelkoa-krpn-ei-tulisi-vastata-samalla-keinolla/>>, checked 1 April 2020.

<sup>117</sup> Koskinen, Palomaa & Niilola, 2020.

<sup>118</sup> *Bazaramba*, 11 June 2010, p. 29.

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