Deterrence

Deterrence as Principle of Sentencing in International Criminal Justice

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Contents

1 Introducing Deterrence

1.1 Defining Deterrence

Deterrence is one way of crime prevention. While deterrence and prevention are often used interchangeably (Aukerman 2002, 63; as example see the definition of deterrence by the ICTY[1]) it is important to draw a distinction between these two terms. As Bentham (1998, 53-54) argues, there are three principal ways to prevent crime: take away the physical power to violate the law, take away the desire to offend, or make the individual afraid of offending. "In the first case, the individual can no more commit the offense; in the second, he no longer desires to commit it; in the third, he may still wish to commit it, but he no longer dares to do it. In the first case, there is a physical incapacity; in the second, a moral reformation; in the third, there is intimidation or terror of the law." As deterrence refers to the third case, it can be argued that deterrence is only one method to prevent future offences.

"Deterrence broadly defined is the ability of a legal system to discourage or prevent certain conduct through threats of punishment or other expression of disapproval" (Akhavan 1999, 741). Thus, deterrence theory builds its argument on the fundamental assumption that by prosecution and punishment of perpetrators future crimes can be deterred (Wippman 1999, 476). This assumption is based on the utilitarian theoretical framework which frames persons as rational choice actors (Cryer et al. 2010, 26). That is to say actors take a decision by solving a cost-benefit-calculation. Therefore, in the context of international crimes, actors are for example "weighing the risk of prosecution against the personal and political gain of continued participation in ethnic cleansing and similar acts" (Wippman 1999, 476). To solve the cost-benefit-calculation two major factors are taken into account by the actor: the gravity of the consequences (severity) and the likelihood of getting caught (certainty). According to Aukerman, actual severity or certainty of punishment is less important than perceived severity or certainty (2002, 64), because the subjective perception of these factors is dependent on several circumstances that influence a decision as will be shown below.

The purpose of deterrence is "to punish because punishment builds a safer world". In contrast to retribution the theory of deterrence "view[s] law as fulfilling a social engineering function" (Drumbl 2004, 589). Punishment in this context also reestablishes the general confidence in the rule of law, because it meets the community´s need for a reaction to the crime (Mennecke 2007, 320). Deterrence as principle of sentencing is regarded as one means of crime prevention. That is to say it is future oriented.

The preventive outcome of deterrence can be achieved by two complementary mechanisms: specific/individual deterrence and general/collective deterrence. "Individual deterrence seeks to prevent future crime by setting sentences that are strict enough to ensure that a particular offender will

[1] "That said, the purposes and functions attributed to punishment seem to cover general prevention or deterrence (the punishment serving to dissuade society´s members from committing offences), specific prevention (the punishment aimed at deterring the convicted person from recidivism), …" (The Procecutor vs. Drazen Erdemovic, Sentencing Judgement, Case No. IT-96-22-T (29 November 1996), para. 60).

not reoffend. General deterrence, on the other hand, attempts to prevent crime by inducing other citizens who might be tempted to commit crime to desist out of fear of the penalty" (Aukerman 2002, 63). Specific deterrence is therefore built on the assumption that the experience of prosecution and punishment influences the future cost-benefit-calculation of the punished perpetrator by raising his or her anticipated costs of committing a crime. Following this logic, the perpetrator who gets no punishment is not deterred from committing future offences. However, it is argued that the punishment of every perpetrator is not necessary due to the mechanism of general deterrence. That is to say, actors do not only change their cost-benefit-calculations, if they get punished, but also if they experience that other perpetrators get punished. The perceived risk to get punished therefore raises the costs of the offence. The fear of getting punished makes the potential offender refrain from committing the crime. Therefore, the principle of general deterrence implies that exemplary punishments adequately prevent future crime (Ibid., 64). While punishment based on specific deterrence is only aimed at deterring perpetrators who already have committed an offence, punishment based on general deterrence is also aimed at deterring perpetrators who did not receive any sanctions or people who are thinking about committing a crime. Therefore, the two mechanisms work complementary.

1.2 Criticism of Deterrence

1.2.1 Criticism of the Conception of Rational Choice Actors in Context of International Crimes

The principle of deterrence of international crimes has to face a lot of criticism on different levels. Starting with criticism of the theoretical framework three major points of criticism can be observed.

First, the conception of the rational actor is challenged. Even if the perpetrator acts on the basis of rational choice decisions, this does not have to lead to the conclusion that he or she actually refrains from the criminal act. As Cronin Furman (2013, 444-445) argues, there are even situations in which cost-benefit-calculations lead directly to criminal behavior as rational decision. This is the case especially in civil wars where different rebel groups are involved. In situations where a rebel group is about to lose a fight or is in danger of getting dominated by the enemy it is a common practice to engage in killings of civilians or other atrocities in order to create pressure on the other side.

A second complex of criticism goes even further and questions the theoretical basis of utilitarianism and rational choice in the context of international crimes. This consideration can be outlined in several directions. All of them share the idea that the rational-choice model inadequately reflects realities of international crimes. First, there may be persons who are not deterred by any chance (Ibid., 809). The most extreme form of this phenomenon is resembled by suicide bombers or ideologically motivated perpetrators. Second, there may be situations where atrocities are committed that do not follow any rational logic but are perpetrated because of excessive demands and stress of the perpetrator. An example would be the creation of an atmosphere of bloodlust and other phenomena that are especially characteristic for genocidal episodes (Mennecke 2007, 326). Third, in context of international crimes are strategies developed that avoid rational considerations. This may be the case for the "winning-war-

logic", saying that perpetrators regard themselves as the winners for which reason they do not fear any future punishment (Aukermann 2002, 68). Another strategy would be the "nothing-to-lose-logic". Once perpetrators have been indicted, they may regard themselves as "outlaws" (Mennecke 2007, 327). Fourth, Cronin Furman (2013, 445-446) criticizes deterrence theory in taking into account the command structure. Orders from above might influence the decision-making process of soldiers on the ground on the one hand. That is to say, in this case soldiers act on the basis of obedience and not on the basis of a rational decision-making process. As an effect, the soldier does not feel responsible for his own behavior as he justifies himself by referring to the received orders.[2] On the other hand there might be cases in which no command discipline exists. That in turn leads to atmospheres where committing of atrocities becomes more likely. Discipline in military has, among others, the function to control violence and to provide a basically structured social environment within the chaotic situation of war. If the military social order is absent, soldiers may not be able to cope with wartime situations and use violence as coping-strategy or as result of excessive demands and thus are not anymore able to engage in rational decision making.[3] Besides these two main complexes of criticism a third complex argues that also extra-legal and informal sanctions have to be taken into account when doing the cost-benefit-calculation. That is to say that in most cases deterrent mechanisms preexist which are much more visible, certain, and severe for the perpetrator than sentencing of an international adjudicative body. In these cases the indictment of an international tribunal might be the least immediate, visible, certain, and severe factor to take into account for the cost-benefit calculation (Ibid., 793).

All in all the different criticism mainly question the rational choice approach as appropriate basis for the development of punishing goals such as deterrence in the context of international crimes.

1.2.2 Criticism on Lack of Empirical Evidence

One reason for the contentiousness of the theoretical foundations of deterrence is the lack of empirical evidence. There exists no empirical evidence that prosecution and punishment deters perpetrators from committing crimes – not even on the domestic level (Aukerman 2002, 64). It is argued that empirical evidence in this case is difficult to achieve, since it is very hard to prove the reasons why somebody has not committed any crime (Ibid.). Nevertheless, that does not necessarily mean that the underlying assumption of deterrence is false. Moreover, there exists some anecdotal evidence about the deterrent effect of the ICC (Mennecke 2007, 324): Jerema Rone, a Sudan researcher for Human Rights Watch, reported that the UN Security Council´s referral of the Darfur situation to the ICC was "a real deterrent

[2] Smeulers calls this effect "agentic state" as "the condition a person is in when he sees himself as an agent for carrying out another person´s wishes" (Smeulers 2011, 211). The soldier interpreting himself as an agent therefore comes in a situation where he recognizes himself not as responsible for the committed acts. In fact, this is blinding out the reality of individual responsibility as a principle of international criminal law. Therefore, the soldier in this situation is not anymore a rational actor, as he is not able to take into account the *de facto* costs that could arise out of his actions.

[3] Lifton frames wars among others as "atrocity producing situations". They are "so structured externally (or institutionally) that the average person entering it (…) will commit or become associated with atrocities" (Lifton 1988, 224). The lack of social order in armed forces can contribute to such a situation as the soldier is missing social backing to adequately cope with the demands of wartime situations.

in that people in Khartoum were worried and were talking about "la Hague", that they might have to go The Hague. They are really worried" (Rone 2005, 20). Furthermore, Harmon and Gaynor argue that "there is some evidence that the international justice system is forcing western military commanders to listen more closely to their legal advisers when selecting targets and weapons for bombing missions" (Harmon/Gaynor 2007, 695). [4]

1.2.3 Criticism of Deterrence as Meaningful Principle of International Sentencing

The main argument against deterrence as principle in sentencing by international adjudicative bodies is developed out of the doubt that the deterrence principle cannot be transferred from the domestic to the international level – especially in the context of international crimes (Ibid.). It is argued that no "culture of accountability" is established by the international criminal tribunals (ICTs) and the ICC because of several circumstances which are characteristic for prosecutions of international crimes.

First, it is argued that no certainty and no severity is established by the ICTs and the ICC. This is the case due to the small numbers of prosecutions. Since only some of the most responsible perpetrators are indicted, there exists no certainty and no severity for lower ranking perpetrators (Cronin-Furman 2013, 442). Another critical aspect is the limited jurisdiction of the ICTs. For example, jurisdiction of the ICTR only refers to the actual period of genocide and thus is not pointed at the preparation of atrocities.[5] Furthermore, the long periods between committing the atrocity, prosecution, detention and sentencing challenge the assumption of any deterrent effect. It is also argued that the establishment of a criminal tribunal during armed conflict does not create any deterrent effect; since dynamics can evolve that make belligerents responsive only to direct intervention (Aukerman 2002, 67-68). This reasoning is connected to the rational actor model, as it implies that only severe costs as caused by a military intervention are able to halt further violence, which otherwise is seen as more benefiting. In that perspective, criminal prosecutions All in all, these criticisms point to the argument that international adjudicative bodies are not shaped in a way that is able to deter international crimes in any way.

An argument which builds on this main criticism states that the important deterrent mechanisms already exist or can be found on the national level in extra-legal or informal sanctions. This directly refers to one criticism related to the theoretical framework (Ku/Nzebile 2006, 793).

The second main argument against deterrence as principle in international sentencing is stating that a deterrent effect is not only non-existent, but that this approach even creates obstacles for the peace process. Two ways can be observed in how these mechanisms are working. First, there exists anecdotal evidence that during the conflict in the former Yugoslavia it was tried to conceal atrocities. This even complicates investigations and can lead to a lesser effectiveness which in turn mitigates any

[4] They refer to: Baker 2002; Clark 2001; ICC Prosecutor´s Letter to Senders concerning Iraq, 9 February 2006.

[5] One reason why Rwanda voted against the establishment of the ICTR was indeed the limited jurisdiction which made it impossible to prosecute the planning of genocide (see: UNSC S/PV.3453, referred to by e.g.: Sandholtz 2008, 137).

possible deterrent effect (Wippman 1999, 480). Second, as it is argued in the justice vs. peace debate that the prosecution of key figures is counterproductive for negotiations in transitional phases of conflicts. This creates further instability which can lead to an extension of conflict and therefore the likelihood of atrocities is increased (Mennecke 2007, 327).

On the theoretical level there exists a counterargument against the objection that deterrence has counterproductive side-effects. As deterrence is based on utilitarianism, no measures would be taken that are in any way counterproductive. "Utalitarian goals of deterrence also provide a justification for abandoning post-transition prosecutions when the mischief they would produce would be greater that what they prevented (Aukerman 2002, 66).

As it can be shown, the deterrence argument in context of international criminal justice is highly contentious in scholarly debate.

2 Deterrence as a Sentencing Principle

2.1 Domestic Sentencing

Deterrence is not directly stated as punishing purpose of the Criminal Code of the Socialist Federal Republic of Yugoslavia. However, it reads: "The general purpose of drafting and imposing the criminal sanctions is to suppress the socially dangerous activities which violate or jeopardize the social values protected by the criminal code" (Art. 5(2)). The code states the suppression of "socially dangerous activities" as a general purpose of criminal sanctions. Deterrence is one means to achieve this goal, as it was outlined by Bentham (see above). Furthermore, the criminal code also states multiple purposes of sentencing – prevention being one purpose amongst others: "The purpose of punishment in the framework of the general purpose of criminal sanctions (art 5, para 2) is: 1) preventing the offender from committing criminal acts and his rehabilitation" (Art. 33(1)). The ICTY directly refers to these articles in its Sentencing Judgment of Erdemovic (The Procecutor vs. Drazen Erdemovic, Sentencing Judgement, Case No. IT-96-22-T (29 November 1996), para. 61) and states furthermore "the Chamber may have recourse to the functions of penalties identified within national criminal systems, it needs to do so cautiously" (Ibid., para. 62).

While the ICTY directly and explicitly refers to the domestic criminal code of the country of jurisdiction and names it as one source in deriving sentencing principles, neither the ICTR nor the SCSL refer in their case law to domestic sentencing purposes or general purposes of punishment in deriving deterrence as main sentencing principle.

2.2 International Sentencing

The idea of punishing war criminals dates back at least to the end of World War I, but was first implemented after World War II (Ku/Nzelibe 2006, 784). The prosecutions focused mainly on retribution (Cronin-Furman 2013, 436). However, during the WWII the Allied forces hoped to deter

Germans by issuing "a full warning" to German war criminals that they would "be brought back to the scene of their crimes and judged on the spot by the peoples whom they have outraged." (Moscow Declaration on Atrocities, in: Mennecke 2007, 321).

In the creation of the ICTY and the ICTR deterrence was one of the main purposes. This is outlined in Security Council Resolution 827 (25 May 1993):

"Believing that the establishment of an international tribunal and the prosecution of persons responsible [for the crimes to be tried] will contribute to ensuring that such violations are halted and effectively redressed."

The deterrent objective of the ICTY was further mentioned in the 1994 Annual Report: "In short, the Tribunal is intended to act as a powerful deterrent to all parties against continued participation in inhuman acts" (para. 13). This citation expresses also the hope that the establishment of a tribunal is able to deter further atrocities in former Yugoslavia where the conflict was still ongoing at the moment the tribunal was created. While the ICTY was established to deter perpetrators in the ongoing conflict, the ICTR was established only after the genocide in 1994. Nevertheless, deterrence was also one of the main purposes in establishing this tribunal as UNSC Resolution 955 (8 November 1994) reads similar to Resolution 827:

"Believing that the establishment of an international tribunal for the prosecution of persons responsible for genocide and other above-mentioned violations of international humanitarian law will contribute to ensuring that such violations are halted and effectively redressed."

Since the statutes of the tribunals did not provide any guidance on sentence measuring, the judges turned to Security Council Resolutions and earlier international and national precedents relating to international crimes (Mennecke 2007, 322).

The evolution of deterrence as main objective in international criminal justice can be observed in the Joint Statement of the Prosecutors of the ICC, the ICTY, ICTR and SCSL in 2004, where the deterrent effect is stressed as it reads in the last paragraph: "We believe that the people of the world are entitled to a system that will deter grave international crimes and hold to account those who bear the greatest responsibility. Only when a culture of accountability has replaced the culture of impunity can the diverse people of the world live and prosper together in peace" (Joint Statement, 2004).

Indeed, the establishment of the ICC seems to have pushed the principle of deterrence to become the most important objective of international criminal justice. Deterrence has been a major issue in negotiations of the Rome Statute (Klabbers 2001, 251) and is implicitly mentioned in the preamble where it says that one goal among others is "to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes" (Preamble, Rome Statute).[6]

[6] As deterrence was one of the main motivations to establish the ICC, as Klabbers has argued (2001, 251), it may be expressed by the term "prevention" in the Rome Statute. Either, because it is seen as synonymous to deterrence as was also the case in the Erdemovic judgment of the ICTY, or because deterrence is one way of crime prevention as outlined in the model of Bentham (1998, 53-54).

In general it can be said that the impact of deterrence on international criminal justice has evolved over time and can be seen nowadays as one of the most important punishing objectives, if not the most important one. Many scholars and activists perceive it as one of the most important goals of international justice.[7] The deterrence principle is mostly held in very general terms, saying that tribunals can deter or prevent future human atrocities. Thus, it is placed in opposition to impunity or realpolitik (Ku/Nzelibe 2006, 787). The argument of deterrence is twofold. First, it argues that tribunals "fostering conditions for the emergence of a political culture where such atrocities are no longer acceptable". Second, tribunals "will have immediate deterrence effects as long as they are designed properly and provided adequate authority and resources" (Ibid., 788). However, the claim that deterrence should be the main function of international adjudicative bodies is highly contested, as was shown above.

3 Deterrence in the Sentencing Judgments of ICTY, ICTR and SCSL

3.1 General Analysis

In analyzing the judgments, first of all the frequency of phrases containing specific and/or general deterrence was counted. The table and three diagrams demonstrate the general frequency of deterrence mentioned in the judgments:

	Specific Deterrence (N)	General Deterrence (N)
Absolute (N=161)	43	126
ICTY (N=91)	41	68
ICTR (N=61)	1	50
SCSL (N=9)	2	8

Table 1: Cases containing phrases of specific deterrence and general deterrence (N).

[7] E.g. Aukerman (2002, 65) and Klabbers (2001, 252) give many examples.

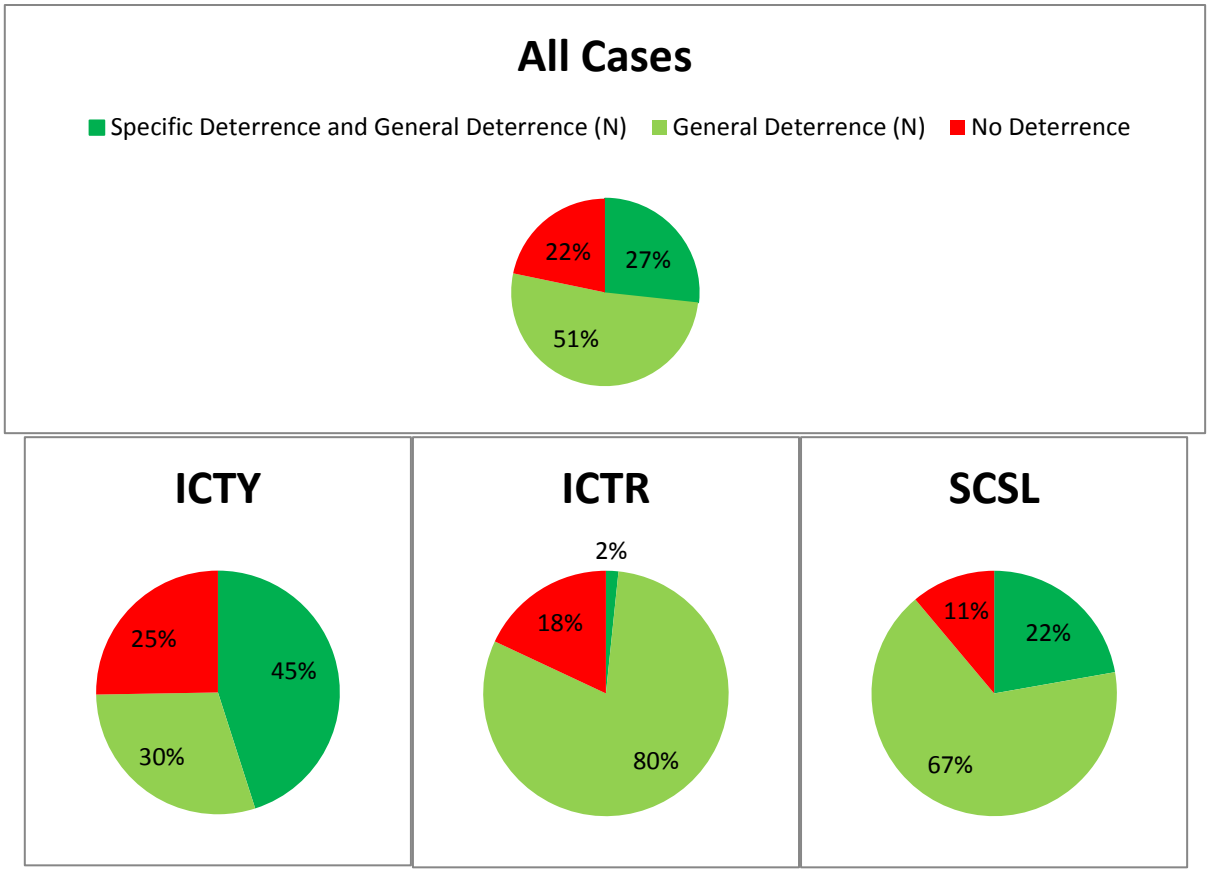

Table 2: Cases containing phrases of specific and general deterrence (%)

If the numbers and percentages are taken into account, it is interesting that 78% of all cases contain at least one passage where deterrence as sentencing goal is mentioned. The variation of the discussion of deterrence as sentencing objective is huge: While deterrence as sentencing goal is discussed in seven paragraphs (The Procecutor vs. Drazen Erdemovic, Sentencing Judgement, Case No. IT-96-22-T (29 November 1996), para. 58-64) it is mostly named without further explanation. The shortest version can be found in judgments of the ICTR. The phrase "The penalty imposed should reflect the aims of retribution, deterrence and to a lesser extent rehabilitation." is mentioned in 13 of the ICTR judgments without any discussion of these goals (see e.g.: The Prosecutor vs. Simon Bikindi, Judgment, Case No. ICTR-01-72 (2 December 2008), para. 443).

If only the relative frequencies are taken into account, it can be observed that deterrence is used more frequently the later the Court was established. However, this may correlate only with the absolute cases per Court, since the number of cases differs very much from Court to Court.

Furthermore, it can be observed that specific deterrence is less frequently stated. Specific deterrence is never mentioned without a connection to general deterrence. While in most of the ICTY cases both specific and general deterrence are part of the sentencing considerations, specific deterrence at the ICTR and at the SCSL is nearly absent.

3.2 Deterrence as Sentencing Principle at the ICTY

3.2.1 Case Law Analysis

In order to analyze the deterrence argument in the case law of the ICTY, first the most frequent phrases regarding to deterrence are put into a table to give a first impression of the argument structures:

Phrase (meaning, not literal)	**Frequency**	**Case law example**
Retribution and deterrence are the main purposes of sentencing.	30	Prosecutor vs. Dragan Nikolic, Sentencing Judgement, Case No. IT-94-2-S (18 December 2003), para. 132: "Fundamental principles taken into consideration when imposing a sentence are deterrence and retribution. The Appeals Chamber in "Čelebići" held, inter alia, that: the Appeals Chamber (and Trial Chambers of both the Tribunal and the ICTR) have consistently pointed out that two of the main purposes of sentencing for these crimes are deterrence and retribution."
Specific and general deterrence are explicitly distinguished.	22	Prosecutor vs. Darko Mrda, Sentencing Judgement, Case No. IT-02-59-S (31 March 2004), para. 16: "The deterrent effect aimed at through punishment consists in discouraging the commission of similar crimes. The main effect sought is to turn the perpetrator away from future wrongdoing (special deterrence), but it is assumed that punishment will also have the effect of discouraging others from committing the same kind of crime, which is, for the Tribunal, a crime described in the Statute (general deterrence)."
Deterrence is only a backdrop factor, should have no undue prominence in measuring the sentence.	19	Prosecutor vs. Stevan Todorovic, Sentencing Judgement, Case No. IT-95-9/1-S (31 July 2001), para. 28: "At the outset, the Chamber observes that, while the Appeals Chamber of the International Tribunal has held that retribution and deterrence are the main principles in sentencing for international crimes, in the Chamber's opinion these purposive considerations merely form the backdrop against which an individual accused's sentence must be determined."
Special deterrence is not relevant either in general or in the case at hand.	11	Prosecutor vs. Darko Mrda, Sentencing Judgement, Case No. IT-02-59-S (31 March 2004), para. 17: "In the instant case, the Trial Chamber considers the chance that the convicted person will commit the same kind of crime in the future to be small, which considerably reduces the relevance of special deterrence."
The deterrence argument refers to judgments of Appeals Chambers.	8	Prosecutor vs. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic, Judgement, Case No. IT_23-T&IT-96-23/1-T (22 February 2001), para. 839: "In the Tadic case, the Appeals Chamber was faced with a ground of appeal alleging that the Trial Chamber had erred in placing excessive weight on deterrence as a factor in the assessment of appropriate sentences for violations of humanitarian law. The Appeals Chamber, held, without further elaboration, that the "principle of deterrence ... is a consideration that may legitimately be considered in sentencing". It did say, however, that "this

		factor must not be accorded undue prominence in the overall assessment of the sentences to be imposed on persons convicted by the International Tribunal." The Appeals Chamber did not indicate whether its remarks concerned special or general deterrence or both. The Appeals Chamber in the Aleksovski case considered a submission by the Prosecutor that a manifestly disproportionate sentence defeats one of the purposes of sentencing for international crimes, namely to deter others from committing similar crimes, and that the sentence imposed by the Trial Chamber was too lenient. That Appeals Chamber accepted the "general importance of deterrence as a consideration in sentencing for international crimes". It also concurred with the Appeals Chamber in the Tadic case that this factor should not be accorded undue prominence in the overall assessment of sentences to be imposed by the International Tribunal. The Appeals Chamber in the Aleksovski case appears to have been concerned with general deterrence only. The Appeals Chamber in the Delalic case similarly appears to have remarked – endorsing deterrence as an important sentencing factor, although not according it undue prominence - on general deterrence only."
Specific and general deterrence are implicitly distinguished.	7	Prosecutor vs. Predrag Banovic, Sentencing Judgement, Case No. IT-02-65/1-S (28 October 2003), para. 34: "The principle of retribution is not aimed at fulfilling a desire for revenge but to express the outrage of the international community at these crimes. It means that the punishment of an offender must be proportionate to the specific criminal conduct. On the other hand, the principle of deterrence is a legitimate consideration in sentencing. Indeed, the Appeals Chamber has recognised that one of the purposes of the Tribunal in bringing to justice individuals responsible for serious violations of international humanitarian law is to deter future violations. It has thus recognised the "general importance of deterrence as a consideration in sentencing for international crimes". The Trial Chamber understands the principle of deterrence to mean that any penalty imposed must have sufficient deterrent value to ensure that those who would consider committing similar crimes will be dissuaded from so doing. Accordingly, this Trial Chamber has applied the principle of deterrence in determining the sentence to be imposed. However, in so doing, the Chamber, as stressed in Tadić, has taken care to ensure that the deterrence principle is not accorded undue prominence."
Deterrence as the most important factor	5	Prosecutor vs. Dusko Tadic, Sentencing Judgement, Case No. IT-94-1-Tbis-R117 (11 November 1999), para. 7: "The Trial Chamber in the Celebici case concluded that "retributive punishment by itself does not bring justice" and that "deterrence is probably the most important factor in the assessment of appropriate sentences for violations of international humanitarian law.""

Deterrence is an important measure to create stability and to establish respect for the rule of law.	5	Prosecutor vs. Dragan Obrenovic, Sentencing Judgement, Case No. IT-02-60/2-S (10 December 2003), para. 51: "It is hoped that the Tribunal and other international courts are bringing about the development of a culture of respect for the rule of law and thereby deterring the commission of crimes."
Reference to domestic law of former Yugoslavia.	4	The Procecutor vs. Drazen Erdemovic, Sentencing Judgement, Case No. IT-96-22-T (29 November 1996), para. 61: "This multiple purpose was in fact written into the Criminal Code of the former Yugoslavia, in force at the time the crimes were committed, in Article 33 which reads: "Within the general purpose of criminal sanctions (article 5(2)), the purpose of punishment is to: (1) prevent the perpetrator from committing criminal offences and re-socialise him; (2) pedagogically influence others not to commit criminal offences; (3) strengthen the morals of the socialist self-managing society and to influence the development of social responsibility and of discipline amongst the citizens." Article 5(2) reads: "The general purpose of prescribing and imposing criminal sanctions is the repression of socially dangerous activities, which threaten or harm the social values protected by the penal legislation.""
Reintegration is one goal of deterrence.	4	Prosecutor vs. Dario Kordic & Mario Cerkez, Judgement, Case No. IT-95-14/2-T (26 February 2001), para. 1078: "General deterrence, however, refers to a sentence's effect to dissuade other potential perpetrators from committing the same or similar crimes. In the context of combating international crimes, deterrence refers to the attempt to integrate or to reintegrate those persons who believe themselves to be beyond the reach of international criminal law. Such persons must be warned that they have to respect the fundamental global norms of substantive criminal law or face not only prosecution but also sanctions imposed by international tribunals. In modern criminal law this approach to general deterrence is more accurately described as deterrence aiming at reintegrating potential perpetrators into the global society. It is important to note, however, that this sentencing factor must not be given "undue prominence" when determining a sentence."
Prevention is mentioned with or without connection to deterrence.	3	Prosecutor vs. Dario Kordic & Mario Cerkez, Judgement, Case No. IT-95-14/2-T (26 February 2001), para. 1073: "In imposing a sentence, the Appeals Chamber has consistently held that the following purposes of sentencing shall be considered: (i) individual and general deterrence concerning an accused and, in particular, commanders in similar situations in the future; (ii) individual and general affirmative prevention aimed at influencing the legal awareness of the accused, the victims, their relatives, the witnesses, and the general public in order to reassure them that the legal system is being implemented and enforced;"

"punitur ne peccatur"	2	Prosecutor vs. Dusko Tadic, Sentencing Judgement, Case No. IT-94-1-Tbis-R117 (11 November 1999), para. 7: "In discussing its sentencing policy, the Trial Chamber in the Furundija case stated: It is the mandate and the duty of the International Tribunal, in contributing to reconciliation, to deter such crimes and to combat impunity. It is not only right that punitur quia peccatur (the individual must be punished because he broke the law) but also punitur ne peccatur (he must be punished so that he and others will no longer break the law). The Trial Chamber accepts that two important functions of the punishment are retribution and deterrence."
The accused ones are no instrument to create a deterrent effect.	2	Prosecutor vs. Dragan Obrenovic, Sentencing Judgement, Case No. IT-02-60/2-S (10 December 2003), para. 52: "One may ask whether the individuals who are called before this Tribunal as accused are simply an instrument through which to achieve the goal of the establishment of the rule of law. The answer is no. Indeed, the Appeals Chamber has held that deterrence should not be given undue prominence in the overall assessment of a sentence."
UNSC Resolution 827 is discussed as source of deterrence as sentencing principle.	2	Prosecutor vs. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic, Judgement, Case No. IT_23-T&IT-96-23/1-T (22 February 2001), para. 824: "With respect to Security Council resolution 827, the Trial Chamber is of the view that it is inappropriate to have recourse to that resolution for guidance on what the general sentencing factors of the International Tribunal should be, whether they be deterrence, retribution or another factor. […] It cannot be said that the Security Council intended this passage to serve as a guide on general sentencing factors. The passage should rather be seen against the background of the Security Council's need to justify the establishment of the International Tribunal and the prosecution of individuals as a measure under Chapter VII - in accordance with Articles 39 and 41 in particular - of the UN Charter. Even ignoring that context, the passage clearly refers to the deterrence of such crimes during that particular armed conflict, which was still raging at that point. To use the passage to support deterrence as a general sentencing factor at this point, after the termination of that conflict, would be inappropriate."

Table 3: Most important phrases regarding to deterrence in ICTY case law.

3.2.2 Which sources does ICTY case law take into account to rely on the deterrence argument?

The Erdemovic case (The Procecutor vs. Drazen Erdemovic, Sentencing Judgement, Case No. IT-96-22-T (29 November 1996)) contains all relevant sources that were examined in order to develop deterrence as sentencing goal. The first source mentioned by the judges is the UNSC Resolution 827 (1993). It is observed that the ICTY was created by the UNSC in order to "deter the parties to the conflict in the former Yugoslavia from perpetrating further crimes or to discourage them from committing further atrocities" (para. 58). Furthermore, it is argued that deterrence as outlined in the Resolution 827 among other goals "fit into the Security Council´s broader aim of maintaining peace and security in the former Yugoslavia" (ibid.). However, in the Kunarac et al. case the Trial Chamber challenges the UNSC Resolution 827 as source of establishing deterrence as sentencing principle:

"It cannot be said that the Security Council intended this passage to serve as a guide on general sentencing factors. The passage should rather be seen against the background of the Security Council's need to justify the establishment of the International Tribunal and the prosecution of individuals as a measure under Chapter VII - in accordance with Articles 39 and 41 in particular - of the UN Charter. Even ignoring that context, the passage clearly refers to the deterrence of such crimes during that particular armed conflict, which was still raging at that point. To use the passage to support deterrence as a general sentencing factor at this point, after the termination of that conflict, would be inappropriate." (Prosecutor vs. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic, Judgement, Case No. IT_23-T&IT-96-23/1-T (22 February 2001), para. 824; see also table above)

Thus, deterrence is interpreted not only as a sentencing principle but also as general purpose of the ICTY. While the Trial Chamber clearly made the distinction of sentencing principle and general aim of the tribunal in the Kunarac et al. case, the Erdemovic Trial Chamber did not acknowledge this difference. This shows that the Trial Chambers clearly distinguish between the sources they can apply in deriving deterrence as sentencing principle according to the context of the judgment.

Another source mentioned in the Erdemovic judgment is the London Charter of 1945 and the case-law of the post WWII Military Tribunals (Nuremberg and Tokyo), since they were "convicting persons for offences of the same nature" (para. 62).. It is concluded that general deterrence and retribution have been the main goals of their penalties (para. 59).

A third source taken into account is the Criminal Code of the former Yugoslavia, because this law has been in force during the time the crimes were committed (para. 61). Especially Article 33 and Article 5(2) are mentioned. They contain the main purpose of punishment, which are amongst others prevention and pedagogic influence (ibid.)

Finally, the Court has also taken into account the case law of domestic Courts of the former Yugoslavia which applied the Criminal Code as stated above (para. 63).

The Trial Chamber in Erdemovic (the first ICTY sentencing judgment) examined the legal sources of deterrence as sentencing principle in order to set a foundation for all later sentencing judgments. Interestingly enough, this practice was neither adopted by the other adjudicative bodies nor did all subsequent judgments refer to the Erdemovic case when discussing sentencing goals. Judgments at times referred to single sources: the UNSC Resolution was mentioned only once more in order to

critically discuss it (see above), and domestic law of the former Yugoslavia was mentioned three times more.

3.2.3 How are special and general deterrence weighed as sentencing factors?

Generally it can be observed that deterrence is seen as major sentencing purpose besides retribution. Even in four cases deterrence is regarded as the most important goal. However, it seems difficult to draw a clear line between deterrence and prevention. In the ERDEMOVIC case general and specific prevention are used synonymously with deterrence:

"That said, the purposes and functions attributed to punishment seem to cover general prevention or deterrence (the punishment serving to dissuade society's members from committing offences), specific prevention (the punishment aimed at deterring the convicted person from recidivism), […]" (para. 60).

In the Kordic & Cerkes case individual and general deterrence are regarded as one goal and individual and general prevention as another purpose of sentencing:

"In imposing a sentence, the Appeals Chamber has consistently held that the following purposes of sentencing shall be considered: (i) individual and general deterrence concerning an accused and, in particular, commanders in similar situations in the future; (ii) individual and general affirmative prevention aimed at influencing the legal awareness of the accused, the victims, their relatives, the witnesses, and the general public in order to reassure them that the legal system is being implemented and enforced;" (Prosecutor vs. Dario Kordic & Mario Cerkez, Judgement, Case No. IT-95-14/2-T (26 February 2001), para. 1073)

Thus, the conception of deterrence and prevention does not seem to be uniform. While it is questionable whether this inconsistency has effects on the sentencing, this example shows that Trial Chambers at times are not consistent in their reasoning of sentences or maybe even unfamiliar with the theoretical foundations of deterrence.

Deterrence in general is furthermore understood as backdrop factor for reasoning about sentencing. The underlying reasons for this classification are explicated by the Babic Trial Chamber as follows:

"Nonetheless, it would be unfair, and it would ultimately weaken respect for the legal order as a whole, to increase the punishment imposed on a person merely for the purpose of deterring others. Therefore, in determining the appropriate sentence, the Trial Chamber does not accord undue prominence to deterrence." (see e.g.: Prosecutor vs. Milan Babic, Sentencing Judgement, Case No. IT-03-72-S (29 June 2004), para. 45).

The reasoning was probably initiated by the Tadic Appeal, where it was argued that the "Trial Chamber had erred in placing excessive weight on deterrence as a factor in the assessment of appropriate sentences for violations of humanitarian law" (see: Prosecutor vs. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic, Judgement, Case No. IT_23-T&IT-96-23/1-T (22 February 2001), para. 839).

A differentiation between specific and general deterrence seems to be of importance for the Trial Chambers, since the two kinds of deterrence were mentioned in 22 cases explicitly and in 7 cases

implicitly.[8] While general deterrence is regarded as important in nearly every case, special deterrence is regarded as irrelevant in 11 cases. The Court uses two lines of argumentation to come to this position: First, it is argued that special deterrence is irrelevant because the "likelihood of persons convicted here ever again being faced with an opportunity to commit war crimes […] is so remote as to render its consideration in this way unreasonable and unfair" (Ibid., para. 840). Second, it is argued that "the chance that the convicted person will commit the same kind of crime in the future [is considered] to be small" (Prosecutor vs. Darko Mrda, Sentencing Judgement, Case No. IT-02-59-S (31 March 2004), para. 17).

3.2.4 To what other purposes of sentencing is deterrence linked to?

Besides the prevention of future crime in general as outlined above, the judgments furthermore link deterrence with other goals of international justice.

First, "[i]t is hoped that the Tribunal and other international courts are bringing about the development of a culture of respect for the rule of law and thereby deterring the commission of crimes" (Prosecutor vs. Dragan Obrenovic, Sentencing Judgement, Case No. IT-02-60/2-S (10 December 2003), para. 51).

Second, it is hoped "to integrate or reintegrate those persons who believe themselves to be beyond the reach of international criminal law. Such persons must be warned that they have to respect the fundamental global norms of substantive criminal law or face not only prosecution but also sanctions imposed by international tribunals" (Ibid., para. 137).

Finally, deterrence is hoped to affect peace in the region at hand: "Deterrence of high level officials, both military and civilian, in the context of the former Yugoslavia, by appropriate sentences of imprisonment, is a useful measure to return the area to peace" (Prosecutor vs. Zejnil Delalic, Zdravko Mucic also known as "Pavo", Hazim Delic, Esad Landco also kown as "Zenga", Judgement, Case No. IT-96-21-T (16 November 1998), para. 1234).

All in all, these claimed connections of deterrence to other aims of international justice resemble the goals as discussed in the scholarly literature. However, these links of deterrence should be reviewed critically. For example, it can be questioned why the sentencing of Mucic should have an effect on returning the area to peace, since at that time a peace accord was already signed. Furthermore, deterrence is probably not creating "a culture of respect for the rule of law". Deterrence functions mainly by creating fear of punishment, thus it is not aimed to change the attitudes of people, but only the behavior. Potential perpetrators could still disrespect the rule of law, but refrain from committing a crime, because they are deterred by possible sanctions. The same argument can be used to question the reintegrative effect of deterrence. The question is, whether it can be desirable to integrate a perpetrator of international crimes only by changing his behavior or whether he should also change his attitude in order to be part of society. In general, Trial Chambers seem to connect to other goals of international

[8] See Table 3 for examples.

justice. While this is probably one factor that contributed to the success of this concept, it can be questioned in how far these claimed effects are in fact and in theory attributable to deterrence.

3.2.5 Conclusion

All in all, the ICTY case law extensively elaborates on deterrence as sentencing goal. The legal sources are described as well as the weight of deterrence in the sentence determination process. Furthermore, different cases highlight several goals that are intertwined with deterrence. Also, specific and general deterrence are distinguished. Nevertheless, while some cases focus extensively on deterrence, other cases do not take into account this sentencing purpose at all or name it only randomly. The underlying reason for this phenomenon is unkown.

3.3 Deterrence as Sentencing Principle at the ICTR

3.3.1 Case Law Analysis

In order to analyze the deterrence argument in the case law of the ICTR, first the most frequent phrases regarding to deterrence are put into a table to give a first impression of the argument structures:

Phrase (meaning, not literal)	**Frequency**	**Case law example**
Deterrence is mentioned only as one goal among others.	23	The Prosecutor vs. Ildephonse Hategekimana, Judgement and Sentence, Case No. ICTR-00-55B-T (6 December 2010), para. 732: "The penalty imposed should reflect the aims of retribution, deterrence and, to a lesser extent, rehabilitation"
Deterrence by showing that there is no tolerance in the international community for committing these crimes.	10	The Prosecutor vs. Omar Serushago, Sentence, Case No. ICTR-98-39-S (5 February 1999), para. 20: "That said, it is clear that the penalties imposed on accused persons found guilty by the Tribunal must be directed, on the one hand, at retnbution of the said accused, who must see their crimes punished, and over and above that, on other hand, at deterrence, namely to dissuade for good others who may be tempted in the future to perpetrate such atrocities by showing them that the international community shall not tolerate the serious violations of international humanitarian law and human rights."
General deterrence is especially stressed above other sentencing goals.	7	The Prosecutor vs. Elizaphan and Gerard Ntakirutimana, Judgement and Sentence, Cases No. ICTR-96-10 & ICTR-96-17T (21 February 2003), para. 772: "General Deterrence is particularly emphasized in this respect, so as to demonstrate "that the international community [is] not ready to tolerate serious violations of international humanitarian law and human rights"."
UNSC Resolution 955 is mentioned as source of deterrence argument.	5	The Prosecutor vs. Jean de Dieu Kamuhanda, Judgment and Sentence, Case No. ICTR-99-54A-T (22 January 2003), para. 753: "The Chamber is particularly mindful of Security Council Resolution 955 (1994), which in the preamble stressed in the terms set out below the themes of deterrence, justice, reconciliation, and the restoration and maintenance of peace."

Special and general deterrence are explicitly distinguished.	1	The Prosecutor vs. Vincent Rutaganira, Judgement and Sentence, Case No. ICTR-95-1C-T (14 March 2005), para. 110: "With the sentence, an attempt is made to deter, that is, to discourage people from committing similar crimes. The main result sought is to discourage people from committing a second offence (special deterrence) since the penalty should also result in discouraging other people from carrying out their criminal plans (general deterrence)."
Deterrence is aimed to strengthen the legal system.	1	The Prosecutor vs. Vincent Rutaganira, Judgement and Sentence, Case No. ICTR-95-1C-T (14 March 2005), para.112: "With respect to general deterrence, a sentence would contribute to strengthening the legal system which criminalizes the conduct charged and to assuring society that its criminal system is effective."

Table 4: Most important phrases regarding to deterrence in ICTR case law.

3.3.2 Which sources does ICTR case law take into account to rely on the deterrence argument?

The judgments of the ICTR do not elaborate on sources which should be taken into account in developing the deterrence argument. Neither does the Trial Chamber adopt the practice of the ICTY in discussing the sources of deterrence as principle of sentencing in the first judgment nor does any of the judgment refer to ICTY case law in regards to deterrence. Only in 5 cases the UNSC Resolution 955 is stated as source. Whether the resolution is able to provide guidance for sentencing is not critically reflected. It remains unclear why not even in one case the sources taken into account are outlined.

3.3.3 How are special and general deterrence weighed as sentencing factors?

Most of the cases just name deterrence as one sentencing goal besides others. It seems that this section is only "copy and pasted" in most of the judgments. For example, the phrase "The penalty imposed should reflect the aims of retribution, deterrence and to a lesser extent rehabilitation." is mentioned in 13 of the ICTR judgments without any further discussion (see e.g.: The Prosecutor vs. Simon Bikindi, Judgment, Case No. ICTR-01-72 (2 December 2008), para. 443).

In 7 cases general deterrence is especially stressed: "Specific emphasis is placed on general deterrence, so as to demonstrate that the international community is not ready to rate serious violations of international humanitarian law and human rights" (The Prosecutor vs. Eliezer Niyitegeka, Judgement and Sentence, Case No. ICTR-96-14-T (16 May 2003), para. 84). This phrase also appears several times in the judgments. It remains unclear how general deterrence can be linked to the goal of demonstrating opposition against international crimes. This is probably an example that shows how deterrence becomes more prominent as sentencing goal, as the ICTY did not put special emphasis on general deterrence.

Only one case explicitly states special and general deterrence.

"With the sentence, an attempt is made to deter, that is, to discourage people from committing similar crimes. The main result sought is to discourage people from committing a second offence (special deterrence) since the penalty should also result in discouraging other people from carrying out their criminal plans (general deterrence)." (The Prosecutor vs. Vincent Rutaganira, Judgement and Sentence, Case No. ICTR-95-1C-T (14 March 2005), para. 110)

3.3.4 To what other purposes of sentencing is deterrence linked to?

Besides the function that deterrence should show that the international community has no tolerance for committing atrocities, also the special situation in Rwanda is taken into account when making the deterrent argument. One time it is stated that deterrence "would contribute to strengthening the legal system which criminalizes the conduct charged and to assuring society that its criminal system is effective (The Prosecutor vs. Vincent Rutaganira, Judgement and Sentence, Case No. ICTR-95-1C-T (14 March 2005), para. 112).

The Trial Chamber does neither derive connections of deterrence with other goals from its distinct characteristics nor does it elaborate on how the goals could relate to deterrence as sentencing principle. Furthermore, the Court does not focus on the preventive character of deterrence as such. It seems that the statement of deterrence at the ICTR is more symbolic without an appropriate foundation in deterrence theory or any considerations. This could be the case as the ICTR refers to an atrocious situation of the past where deterrence is not necessary anymore, because the conflict is over and nobody has to be deterred anymore. This could be a reason why deterrence was much more prominent in ICTY sentencing, as the tribunal was established while the conflict in former Yugoslavia was still raging.

3.3.5 Conclusion

In conclusion, the ICTR elaborates much less extensive on deterrence as sentencing goal. It mostly states deterrence as one sentencing purpose amongst others. And if it does, it seems to be used only as a phrase with no further relevance. Furthermore, the Trial Chamber does not connect deterrence to any other goals of international justice. Only a few judgments focus on either the UNSC Resolution 955, aims of deterrence, or the special effect of general deterrence.

3.4 Deterrence as Sentencing Principle at the SCSL

3.4.1 Case Law Analysis

In order to analyze the deterrence argument in the case law of the SCSL, first the most frequent phrases regarding to deterrence are put into a table to give a first impression of the argument structures:

Phrase (meaning, not literal)	**Frequency**	**Case law example**
The judgment refers explicitly to case law of the other Tribunals in the deterrence argument.	4	Prosecutor Against Alex Tamba Brima, Crima Bazzy Kamara, Santigie Borbor Kanu, Sentencing Judgement, Case No. SCSL-04-16-T (19 July 2007), para. 14, 16: "14. Retribution, deterrence and rehabilitation have been considered as the main sentencing purposes in international criminal justice. […] 16. International criminal tribunals have held further that the element of deterrence is important in demonstrating "that the international community is not ready to tolerate serious violations of international humanitarian law and human rights". It follows that the penalties imposed by the Trial Chamber must be sufficient to deter others from committing similar crimes. In the context of international criminal justice, it is recognised that one of the main purposes of a sentence is to "influence the legal awareness of the accused, the surviving victims, their relatives, the witnesses and the general public in order to reassure them that the legal system is implemented and enforced. Additionally, sentencing is intended to convey the message that globally accepted laws and rules have to be obeyed by everybody"."
Deterrence is aimed to strengthen the legal system.	4	
Deterrence is aimed to show that there is no tolerance in society for committing these crimes.	2	
Deterrence is the main purpose besides retribution.	2	Prosecutor vs. Issa Hassan Sesay, Morris Kallon and Augustine Gbao, Sentencing Judgment, Case No. SCSL-04-15-T (8 April 2009), para. 13: "The SCSL Appeals Chamber has stated that, in relation to legitimate sentencing purposes, "[t]he primary objectives must be retribution and deterrence.""
Specific and general deterrence are explicitly stated.	2	Prosecutor vs. Issa Hassan Sesay, Morris Kallon and Augustine Gbao, Sentencing Judgment, Case No. SCSL-04-15-T (8 April 2009), para. 13: "Deterrence is both general, referring to the notion that a convicted person who is punished can serve as an example to others, who will then desist from committing or will be unlikely to commit the said crimes for fear of being punished, and also specific deterrence or incapacitation, which describes the objective of preventing future criminal conduct by restraining or incapacitating convicted persons."

Table 5: Most important phrases regarding to deterrence in SCSL case law.

3.4.2 Which sources does SCSL case law take into account to rely on the deterrence argument?

The SCSL exclusively refers to the jurisprudence of the ad hoc tribunals as a source to develop the deterrence argument. All four judgments that mention deterrence contain a passage with this reference:

"International criminal tribunals have held further that the element of deterrence is important in demonstrating "that the international community is not ready to tolerate serious violations of international humanitarian law and human rights." (e.g. Prosecutor Against Alex Tamba Brima, Crima Bazzy Kamara, Santigie Borbor Kanu, Sentencing Judgement, Case No. SCSL-04-16-T (19 July 2007), para. 16)

This phrase is adopted from the ICTR judgments as discussed above. The SCSL Statute provides the Court to "have recourse to the practice regarding prison sentences in the International Criminal Tribunal for Rwanda and the national courts of Sierra Leone (SCSL Statute, Art. 19). Furthermore, the SCSL does not take into account other sources.

3.4.3 How are special and general deterrence weighed as sentencing factors?

Two out of the four judgments state deterrence as main sentencing purpose besides retribution. The same two judgments contain a passage that shortly distinguishes special and general deterrence. The Taylor case for example states:

"The SCSL Appeals Chamber has stated that, in relation to legitimate sentencing purposes, "the primary objectives must be retribution and deterrence". This is also acknowledged by the ICTY Appeals Chamber which stated that "it is well established that, at the [ICTY] and at the ICTR, retribution and deterrence are the main objectives in sentencing." […] Deterrence is both general, referring to the notion that a convicted person who is punished can serve as an example to others, who will then desist from committing or will be unlikely to commit the said crimes for fear of being punished, and also specific deterrence of incapacitation, which describes the objective of preventing future criminal conduct by restraining or incapacitating convicted persons." (Prosecutor vs. Charles Chankay Taylor, Sentencing Judgement, Case No. SCSL-03-01-T (30 May 2012), para 13, 14)

3.4.4 To what other purposes of sentencing is deterrence linked to?

All four judgments connect deterrence to the goal of raising legal awareness by using the phrase of the Nicolic case, as in the Taylor judgment:

"One of the main purposes of a sentence imposed by an international Tribunal is to influence the legal awareness of the accused, the surviving victims, their relatives, the witnesses and the general public in order to reassure them that the legal system is implemented and enforced. Additionally, the process of sentencing is intended to convey the message that globally accepted laws and rules have to be accepted by everyone." (Prosecutor vs. Charles Chankay Taylor, Sentencing Judgement, Case No. SCSL-03-01-T (30 May 2012), para. 16)

"One of the main purposes of the sentence imposed by an international tribunal is to influence the legal awareness […] in order to reassure them that the legal system is implemented and enforced. Additionally, the process of sentencing is intended to convey the message that globally accepted laws and rules have to be obeyed by everybody." (Prosecutor vs. Dragan Nikolic, Sentencing Judgement, Case No. IT-94-2-S (18 December 2003), para. 139)

3.4.5 Conclusion

SCSL case law does not elaborate extensively on deterrence as sentencing goal. Besides one judgment, all documents contain approximately two paragraphs which contain formulations regarding deterrence. The SCSL seems to rely especially on the jurisprudence of the other criminal tribunals.

4 Conclusion

Deterrence is according to international judges at the ICTY, ICTR and SCSL one of the most important, if not the most important, sentencing principle of international criminal justice. It is based on the theoretical tradition of utilitarianism and recognizes human beings as rational actors. As deterrence has a long tradition in penal thinking, it is not surprising that it also is one factor which is considered in the reasoning about a sentence of a perpetrator of international crimes. However, it is contentious in how far international tribunals are able to deter perpetrators of international crimes. Many critical voices challenge the assumption that international crimes are to be deterred by international sanction as those perpetrators may not act on a rational basis. Moreover, it is highly contested whether the limited scope of international adjudicative bodies inhibits a deterrent effect. The ad hoc tribunals brought the claim of deterrence on the agenda. The establishment of the ICC functioned as catalyst in strengthening the deterrence principle on the international level.

The analysis of the case law of the ICTY, ICTR and SCSL has shown that deterrence is indeed the prominent sentencing principle. However, there are huge differences between the Courts in elaborating upon deterrence in their reasoning. The ICTY elaborates most on deterrence in comparison to the other Courts. The sources of deterrence as sentencing principle as well as possible links to other goals are outlined in the judgments. Both the ICTR and the SCSL do not pay too much attention on deterrence. The findings imply that future sentencing judgments should be more coherent in using deterrence as sentencing principle. Furthermore, it would contribute to the reputation of the Courts if they show their ability to apply deterrence in a meaningful way that is consistent with the underlying theory. This would be especially meaningful, since the academic literature discusses deterrence in context of international crimes extensively. In applying the principle of deterrence in a differentiated way, Courts could show their sensitivity for this issue.

As deterrence in the context of international crimes and international criminal justice is quite contentious, further research could contribute to a more empirically based debate. One complex of research could focus on testing the theoretical assumptions that are the basis for the principle of deterrence. Since the cost-benefit calculation as major factor for criminal behavior is highly contentious especially for perpetrators of international crimes, this would be an adequate point of departure. Empirical studies could research the attitudes and motivations of perpetrators of international crimes. Especially the hypothesis should be tested whether perpetrators of international crimes act on a rational basis. Since deterrence as sentencing principle is very prominent both in academic debate as well as in international case-law, this issue definitely deserves further research in order to substantiate the contentious claim of deterrence as meaningful sentencing principle in international criminal justice.

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