PART I: Selected Factors Facilitating Impunity for International Crimes Through the European Court of Human Rights ................. 1
  I The European Court of Human Rights’ Derogation of the Jus Cogens Nature of Certain Fundamental Human Rights ............ 2
    A Immunity as a Pathway to Impunity for International Crimes ......................................................... 2
    Case 1: Al-Adsani v. United Kingdom ............................................. 5
  B Another Landmark Case on the Issue of State Subject Matter (Functional) Immunity and Absolute Personal Immunity of Individual Perpetrators Against Civil and Criminal Liability ......................................................... 35
    Case 2: Democratic Republic of Congo v. Belgium .................. 35
  C Torture Versus Inhuman or Degrading Treatment or Punishment: Implications for Universal Criminal Jurisdiction and the Chances for Impunity ......................... 42
    Case 3: Ireland v. United Kingdom ........................................... 43
  D The European Court of Human Rights’ Deference to Domestic Legislation via Application of the “Margin of Appreciation” Principle: Another Potential Pathway to Impunity ......................................................... 62
    Case 4: Thiemann and Others v. Norway ............................. 62
References .............................................................................. 90
PART II: The European Court of Human Rights’ Reluctance to Classify European Convention Violations as International Crimes Even When Those Violations Likely Constitute ‘Genocide’ or ‘Crimes Against Humanity’ in Times of Peace or in Immediate Post-conflict Periods ............................................ 91

I De Facto Abrogation of Potential International Crimes Due to the European Court of Human Rights’ Rulings Classifying Such Acts Exclusively as European Convention Human Rights Violations …… 91
A Introduction ………………………………………………………………………………………………………………………… 91

II Forced Sterilization of Roma Women as Part of a Widespread Systemic Discrimination Against, and Persecution of the Roma People: Are the Elements Present for the ICC Crimes of “Genocide by Causing Serious Bodily or Mental Harm” (Article 6(b)); “Genocide by Imposing Measures Intended to Prevent Births” (Article 6(d)) and the Crime Against Humanity of “Enforced Sterilization” (Article 7(1)g-5)? ………………. 93
A Overview of the Plight of Roma Women in Contemporary Europe …………………………………………………………… 93
B Case 1: Commentary on K.H. and Others v. Slovakia ………… 100
C Other Cases of Interest Regarding Forced Sterilization of Roma Women …………………………………………. 112
D Case 2: Commentary on V.C. v. Slovakia …………………… 114

III A Systemic Pattern of Severe Physical Harm to Roma Living in Lead Contaminated United Nations IDP Refugee Camps in Northern Kosovo: Are the ICC Elements Present for the ICC Crimes of Genocide by Causing Serious Mental or Bodily Harm (Rome Statute Article 6(b)), and the Crimes Against Humanity of Apartheid (Rome Statute Article 7(1)(j)) and Persecution (Rome Statute Article 7(1)(h))? ……………………………………… 129
A Introduction ………………………………………………………………………………………………………………………… 129
B Case 3: The U.N. Kosovo Lead Contaminated Roma Refugee Camps Case (The 2006 Case Brought by the European Roma Rights Centre Against the United Nations Interim Administration Mission in Kosovo (UNMIK) on Behalf of 184 Residents Living in U.N. Refugee Camps (Near Contaminated Abandoned Lead Smelters and Mines in Northern Kosovo) and the European Court of Human Rights’ Decision Declining Review of the Case Based on the Court’s Alleged Lack of Jurisdiction Over the Case) …….. 132
C Commentary on the Lead Contaminated UN Kosovo Roma Refugee Camps and the Failure to Prevent or End Harms to the Roma and Other Minorities Due to Extraordinarily High Lead Exposure to Those Inhabiting the Camps: Are Those Responsible Potentially Guilty of Genocide by Causing Serious Physical or Mental Harm and/or the Crimes Against Humanity of Persecution and Apartheid? … 138
IV Death and Injury to Civilians Due to the Failure of KFOR
and/or UNMIK to Remove Unexploded Cluster Bombs
in Post-conflict Kosovo ........................................... 146
A Case 4: Behrami and Behrami v. France (Application
78166/01), European Court of Human Rights Grand
Chamber Judgment (Heard together with Saramati v. France,
Germany and Norway, 2 May 2007) ......................... 146

V Interim Measures Requested by the European Court of Human
Rights in Mamatkulov and Askarov v. Turkey Versus the Court’s
Denial of a Request for Interim Measures by Roma Victim
Applicants Living in U.N. Lead-Contaminated Refugee
Camps in Kosovo .................................................. 162
A Introduction ...................................................... 162
B Case 5: European Court of Human Rights’ Grand
Chamber Judgment in Mamatkulov and Askarov v. Turkey
(Applications 46827/99 and 46951/99) ....................... 163
C Conclusion: Individual State Responsibility
and Accountability Relating to the Kosovo U.N. Lead
Contaminated IDP Camps ........................................ 175
D The Failure of the U.N. to Effectively Exercise Its
Humanitarian and Human Rights Mandate Regarding
the Kosovo U.N. Roma IDP Camp Situation and the
Implications for Individual State Accountability ............. 181

VI The Implications of the European Court of Human Rights’
Refusal to Hold an Admissibility Hearing on the Roma Lead
Contaminated IDP Camps Case and to Indicate Interim Measures
Requiring the Camp Inhabitants Be Relocated to Safe Areas on
an Urgent Emergency Basis ...................................... 185
A Fostering a Climate of Impunity Regarding the
Victimization of the Kosovo Gypsy Minorities Placed
in U.N. Lead Contaminated IDP Camps ...................... 185
B The Kosovo Human Rights Advisory Panel to UNMIK:
Is This a Vehicle for Just Reparation and Public
Acknowledgement of Fundamental Human Rights Violations
Against the RAE Inhabitants of U.N. Lead Contaminated
IDP Camps Managed by UNMIK, or But an ‘Alice in
Wonderland’ Version of an Independent Forum for
Achieving Justice? .................................................. 189
C Comments on the So-Called ‘U.N. Supremacy Clause’ .... 202
References .......................................................... 205
PART III: The European Court of Human Rights’ Reluctance to Classify European Convention Violations as International Crimes Even When Those Violations Likely Constitute ‘War Crimes’ or ‘Crimes Against Humanity in Times of Armed Conflict’

I Introduction ........................................................... 207

II Case 1 Streletz, Kessler and Krenz v. Germany (Applications 34044/96, 35532/97 and 44801/98) European Grand Chamber Judgment ................................................... 210
A Background Facts and Procedural History ......................... 210
B Commentary on Streletz, Kessler and Krenz v. Germany ......... 217

III Case 2 Kolk and Kislyiy v. Estonia (Application 23052/04), European Court of Human Rights Chamber Judgment of 17 January 2006 on Admissibility ....................................... 230
A The European Court of Human Rights’ Reasoning in Kolk and Kislyiy v. Estonia ............................................. 230
B Commentary on Kolk and Kislyiy v. Estonia ...................... 232

IV The European Court of Human Rights De Facto Exoneration of Persons Convicted Domestically of ‘War Crimes’ or ‘Crimes Against Humanity’ and the Implications for Impunity .............. 236
A Case 3 Korbely v. Hungary (Application 9174/02) European Court of Human Rights Grand Chamber Judgement of 19 September 2008 ................................................. 236
B Commentary on Korbely v. Hungary .................................. 244

V Case 4 Kononov v. Latvia (Application 36376/04) European Court of Human Rights Chamber Judgment of 24 July 2008 (Referred to the Grand Chamber 26 January 2009) ............... 253
A Background and Domestic Proceedings ........................... 253
B Commentary on Kononov v. Latvia ................................. 262

References ........................................................................ 272

PART IV: The Importance of Moral Legitimacy in International Human Rights Court Rulings ........................................ 275

I A Few Preliminary Points ................................................. 275

II Moiwana Village v. Suriname (IACHR): An Exemplary Case Regarding Moral Legitimacy in International Human Rights Court Rulings ......................................................... 277
A Case 1: Moiwana Village v. Suriname Inter-American Court of Human Rights Judgement of 15 June 2005 ............... 277
### Contents

III On the Issue of Alleged Ex Post Facto Application of International Human Rights Conventions .................................. 284

IV Moiwana Village v. Suriname and the Issue of a Denial of Justice as an ‘Ongoing (Convention) Violation’ ......................... 286

V Moral Legitimacy of International Human Rights Court Rulings as Essential to the Promotion of an Internationalized Rule of Law ................................................................................ 291

References ........................................................................................................ 293

Index .................................................................................................................. 295
The European Court of Human Rights as a Pathway to Impunity for International Crimes
Grover, S.C.
2010, XXV, 298 p., Hardcover
ISBN: 978-3-642-10797-9