Preface

The genesis for this book lies in my experiences as a law student, back in 2005–2008, when I was working as a research assistant for (the wonderful) Professor Bernadette McSherry. In that capacity, I was helping her draw together materials for a new Monash law unit in international criminal law. At the same time, I was interning at Oxfam Australia in the Mining Unit, and was learning about the struggle a number of communities faced with Australian mining companies operating extraterritorially in their regions. The two experiences collided and I became interested in the potential of international criminal law as a mechanism to deal with the worst extraterritorial human rights abuses that Australian mining companies were sometimes implicated in.

My early research focussed primarily upon the potential of the International Criminal Court and of Australian federal courts to pursue corporations involved in atrocity. But as I presented my developing views, that this would, on balance, be a good thing if it were to happen, I found myself confronted with a range of debates and controversies that demonstrated to me that the proposition was not so straight forward as I initially thought. As a result, I embarked on a broader project, culminating in this book, in a large part to teach myself what I felt I had so far started to understand only at its surface.

There has been an enormous growth in literature and thought about the question of corporate international criminal responsibility since I began thinking about this subject, and on how the international criminal justice system might deal with business actors more broadly, and for this I am grateful. The discourse has become richer and deeper and more critical. Moreover, there have continued to be significant initiatives and indicators of state and prosecutor interest that demonstrate that the issue remains firmly on the international agenda. In November 2019, the Chief Prosecutor of the International Criminal Court, Fatou Bensouda, released a video statement for the XXth International Congress of Penal Law that affirms the commitment of her Office to pursue individuals who, through their business activities, contribute to or directly commit Rome Statute crimes, where appropriate. During her ten-minute address, she stated:

The Rome Statute is anthropocentric and as such protects in the first place the integrity of human life. Business activities can directly impact human life. In some cases, the degree of the impact of business activities on human life may be sufficiently
serious, for those activities to reach the threshold of constituting Rome Statute crimes. As an example, certain organised industrial activities can cause serious injury to physical health, or they may force people to leave their land that thereby, depending on the facts and circumstances, could potentially amount to crimes against humanity under Article 7 of the Rome Statute.

As ICC Prosecutor, I have witnessed the devastating consequences of many different types of international crimes. Unfortunately, certain business practices result in serious human harm. This is especially the case for most vulnerable groups in the developing countries. The ICC can play a role in addressing the conduct causing this harm and, where appropriate, calling it for what it is: an international crime.

My goal in writing this book was twofold. First, it was to produce the resource I would have liked available to me when I first started thinking about this subject, which summarises for those who are curious but unfamiliar with the subject the key history of cases, initiatives and debates, constitutive of the modern effort to address business within the international criminal justice project. Second, it was to clarify in my own mind, and I hope to the benefit of others, the often cross-cutting and complex critiques, concerns and challenges that exist to the pursuit of this project and to assess their weight, implications and nature. I hope that in doing so I have produced something that is of value to both the uninitiated and the expert, and that it might, in a modest way, advance understanding about the role that international criminal justice could play in curbing corporate impunity for international crimes.