Book Review

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NEW MATERIALS ON INTERNATIONAL CRIMINAL JUSTICE FOR BOTH PRACTITIONERS AND ACADEMICS

Reviewing:


Of all subjects in the field of public international law, international criminal law attracts the most attention. This is mainly due to the fact that with the establishment by the United Nations of the *ad hoc* international criminal tribunals for the former Yugoslavia, Rwanda and Sierra Leone, and the creation of the International Criminal Court, it has become a reality. That public international law is being applied by tribunals which have the competence to issue binding decisions is after all a rather uncommon phenomenon. The sudden and radical step towards international criminal justice has quite severe consequences on the original concept of public international law. The conflict is precisely that between state sovereignty and the rule of law as expressed in the subtitle of the reviewed publication by Broomhall.

In his introduction, Broomhall elaborates on the tension that arises when international crimes are in effect being prosecuted. There is the sovereignty-limiting rationale of the Nuremberg legacy on the one hand, conflicting with the sovereignty-based control over enforcement, which characterises the traditional system, which the author calls Westphalian.1 Individual accountability, a concept which is piercing the veil of sovereignty, is not yet

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1 At p. 2. There are authors who believe that the traditional concept developed years later in the struggle between the French monarchy and the English–Dutch republicanism. See BALIBAR, *SIND WIR BÜRGER EUROPAS* 25 (2003), original version: *Transeuropéennes*, 1999–2000, No. 17.
accepted everywhere, although the International Criminal Court may help to develop such a culture. Which areas are the most sensitive in this regard, and how the difficulties can be overcome, are the issue of this study.

The book breaks down into three parts. The first is entitled international criminal law and aims at preparing the theoretical ground for the analysis of the practice of international criminal law that follows. This first part itself is divided into three sections. The first is called “scope” and discusses the substantive law that is summarised by the term international criminal law. Of all possible meanings, the author chooses the narrow understanding of the “core crimes”, namely genocide, crimes against humanity and war crimes, as they are found in article 5 of the Rome Statute of the International Criminal Court. This choice is certainly a wise one for a number of reasons: first, these crimes are the ones that could be agreed upon by the Diplomatic Conference in Rome; second, these are the crimes that have a tradition of enforcement by international bodies since Nuremberg and the United Nations Tribunals; and third, these crimes, as the first and second points prove, can be seen as universally accepted.

The second section is called “from national to international responsibility”. The author starts out scrutinising the principle nullum crimen sine lege. It is interesting to read about the differences between the international principle of nullum crimen and its codification in article 22 of the Rome Statute. The general principle is, in his eyes, wider and relies on supplementation by national law. It may be correct that the principle of legality generally depends on supplementation by some legal order; and that there must, indeed, be some norm the principle can be related to. Such a norm, possibly concerning drug trafficking or terrorist attacks, can be found in a treaty outside the Rome Statute, which the author calls a suppression convention. Should the International Criminal Court ever have jurisdiction over other than the “core crimes”, the difficulties with the principle of legality should be solved by amending the statute and codifying an explicit prohibition, and not just referring to a “suppression convention”. This would much enhance the clarity of the law and conform with article 22 of the Rome Statute, which could remain unmodified. Article 22 of the Rome Statute, as it is now, is perfectly identical with the international nullum crimen principle expressed, for example, in article 7 of the European Convention on Human Rights, as interpreted by the European Court on Human Rights.

The following subsection addresses three different topics: jus cogens, sovereignty and the rationale for international criminal law. The “core

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2 The crime of aggression is not discussed at great length (pp. 19–20) and is left aside here as well.

3 See, e.g., Kokkinakis v. Greece, Series A, No. 260, para. 52.