Book Review


Kittichaisaree’s *International Criminal Law* is a new addition to the ‘Best Textbooks in Law’ series of Oxford University Press.1 This work should therefore be appraised primarily against the background of the book’s purpose as a general textbook for undergraduate and postgraduate studies in international criminal law.

In Part I, on ‘Legal Foundations’, an introduction is given to the basic concepts of international law. Part II of the book is devoted to a detailed study of the particular international crimes encompassed by the jurisdiction of the International Criminal Court (genocide, crimes against humanity and war crimes) and, more cursorily, the crime of aggression and other international crimes. This can be described as a study on the ‘special part’ of international criminal law. Part III discusses problems falling under the ‘general part’ of international criminal law. In this part, the author discusses the different modes of participation in international crimes (complicity, inchoate offences and command responsibility) and the various grounds for excluding criminal responsibility. Finally, in Part IV, the author takes up the procedural and similar aspects of trials at the ICTY/R and the ICC. Roughly one-third of the book is taken up by appendices, comprising the ICTY Statute, excerpts from the ICTR Statute, the ICC Statute and Elements of Crimes, bibliography and index.

The structure of the book can therefore be said to be traditional. It takes for granted that the international tribunals established through Security Council resolutions and the International Criminal Court are the proper judicial organs for the administration of international criminal justice. There is no discussion on the more fundamental aspects of international criminal justice, such as the basis on which the ad hoc tribunals were established, in what ways the system presented truly constitutes a system of criminal justice or the relationship – in general – between national (criminal) law and international (criminal) law. Having taken the above-mentioned international judicial organs for granted, it is not surprising either that the book is silent on issues concerning the general nature of international law. However, different views on this subject can be gleaned from the author’s presentation of different arguments put forth at the preparatory stages of the Rome Statute for the International Criminal Court. Another aspect, which has been left out, concerns the status of the rules of international criminal law. Although different sources of law are mentioned throughout the book, there is no general discussion on the applicability of these rules qua customary law (also jus cogens) or qua

treaty law. Neither can one find explanations on how individual criminal responsibility arises on the basis of such rules of international law. The author touches, on the other hand, upon the effects of international human rights law on international criminal law, albeit briefly. A more principled treatment of all these matters would have benefited the students – especially those at undergraduate level – in their understanding of the international criminal justice system as a whole, as opposed to the mere acquisition of knowledge concerning the details of a set of rules.

The main body of the book is devoted to comments on the offences falling under the jurisdiction of the International Criminal Court. The obvious starting-point for an analysis of these offences will be the text of the Statute. The author adopts this approach and from this starting-point he then points at the corresponding provisions in the statutes of the ad hoc tribunals, as well as relevant international instruments on the subject. The commentary on the offences is – as to be expected – based mainly on statements made at the sessions of the Preparatory Commission for the International Criminal Court and the jurisprudence of the ad hoc tribunals. This method is, at this stage in the development of the law this area, unavoidable. The detailed references to the jurisprudence of the ad hoc tribunals are warranted, as it undoubtedly will form the basis of legal reasoning when the International Criminal Court begins to hear cases. Mainly through the case law of the ad hoc tribunals, the author illuminates the concepts used in the Statute of the International Criminal Court. In the opinion of the reviewer, the author has succeeded in giving a concise and authoritative statement of the elements (regarding both the actus reus and the mens rea) as well as, where applicable, the special conditions associated with each of the offences. The authority of the author’s statements is derived, however, mainly from that of the ad hoc tribunals themselves, as the analyses often stop short at stating the findings of these tribunals (in particular when the Appeal Chamber is of a different opinion from that of the Trial Chamber). As a textbook presenting (more or less) settled law, the treatment is however fully adequate. Nonetheless it would have been interesting also to read the author’s view on the reasoning of the tribunals, in particular in cases of ‘legal breakthroughs’, such as when rape is held capable of being a constituent act of the crime of genocide. In this connection it may also be mentioned that the author has not drawn attention to the comparative method used by the tribunals to establish the meaning of legal terms not defined in the Statute itself, e.g. in the case of ‘rape’.

The division into a General Part and a Special Part entails that general criminal law issues concerning specific offences are treated in the Special part, e.g. attempt at, complicity in and incitement of particular crimes. This means that the reader will have to refer to both parts to get a complete picture. Furthermore, the treatment of issues in the General Part are rather cursory. For instance, the brief discussion on complicity does not deal with the question of non-correspondence of mens rea in different agents who carried out the same actus reus. No doubt, the author has the right to presume sufficient background knowledge of criminal law on the part of the readers and choose to leave out the more complex problems of general criminal law in a textbook on international criminal law. However, even general principles of criminal law differ from legal system to legal system and there are no prima facie reasons that such principles be applicable in international criminal law. In this respect, some discussion on the above-mentioned use of comparative method would have been beneficial.

In a chapter on aggression and other crimes, the author deals briefly with international drug trafficking, international terrorism and other crimes. Theses offences are however discussed in the perspective of whether they should have been included in the jurisdiction of the International Criminal Court. There is thus no attempt to include in the book the various crimes that have been the subject of international conventions and are normally referred to as international crimes (e.g. slavery, apartheid, hostage-taking, counterfeiting, piracy, environmental