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978-0-521-69954-9 - An Introduction to International Criminal Law and Procedure

Robert Cryer, Hakan Friman, Darryl Robinson and Elizabeth Wilmshurst

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## An Introduction to INTERNATIONAL CRIMINAL LAW AND PROCEDURE

International criminal law has developed considerably in the last decade and a half, resulting in a complex and re-invigorated discipline. This has impacted directly on the popularity of the study of the subject, particularly on postgraduate law degrees. This textbook serves these courses by providing an introduction to the principles of international criminal law and processes. Written by four international lawyers with experience of teaching international criminal law, it is accessible yet sophisticated in its approach. It covers substantive international criminal law, the institutions designed to enforce it and their procedures, and the international law applicable to domestic prosecutions of international crimes. It will be essential reading for students and teachers of international criminal law. In addition to practitioners and researchers in the field, and in related fields such as criminal law, students of international law and international relations will find this introduction invaluable.

ROBERT CRYER is Professor of International and Criminal Law at the University of Birmingham.

HÅKAN FRIMAN is Honorary Professor at University College London.

DARRYL ROBINSON is an Adjunct Professor at the University of Toronto, Faculty of Law.

ELIZABETH WILMSHURST is a Senior Fellow at Chatham House and Visiting Professor at University College London.

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ROBERT CRYER  
HÅKAN FRIMAN  
DARRYL ROBINSON  
ELIZABETH WILMSHURST



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## Preface

With the start of the first prosecutions by the International Criminal Court and the closing phases of the work of the ad hoc Tribunals, this is a good time for a new book on international criminal law and its institutions. This book is intended as an accessible yet challenging explanation and appraisal of international criminal law and procedure for students, academics and practitioners. We focus on the crimes which are within the jurisdiction of international courts or tribunals – genocide, crimes against humanity, war crimes and aggression – and the means of prosecuting them. We also briefly discuss terrorist offences, torture, and other crimes which are not (yet) within the jurisdiction of an international court or tribunal.

International criminal law is now a vast subject, even on our circumscribed view of what it contains. This book is intended as a manageable and useful introduction to the field, and therefore does not attempt to delve into the entirety of the subject in the full detail it deserves. We welcome comments on possible improvements that could be made. We have sought to be succinct rather than simplistic in our presentation. We have included some references to academic commentary, both in the footnotes and in ‘further reading’ sections at the end of each chapter. However, there is a great deal of writing on international criminal law, and we could not refer to it all. We hope that this book piques the interest of those new to the subject to further investigations including into the considerable and insightful literature which the developments in international criminal law have engendered.

While we hope that this book will appeal to practitioners as well as to students, the chapters are intended to cover the subjects which can be dealt with during a university Masters course in international criminal law. Part A is introductory. Following a discussion in Chapter 1 of what we mean by international criminal law and of some of its most fundamental principles, we consider in Chapter 2 the objectives of this body of law: do they differ from those of national law, for example? Part B is concerned with prosecutions in national, rather than international, courts. Chapter 3 discusses the principles of jurisdiction as they relate to international crimes, Chapter 4 describes some instances of national prosecutions and Chapter 5 concerns extradition, transfer of information and other means by

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which States cooperate to assist in bringing suspects to justice before national courts. Part C, which concerns international prosecutions, begins in Chapter 6 with a history of the trials following the Second World War and Chapters 7 and 8 respectively discuss the ad hoc Tribunals and the International Criminal Court. Chapter 9 describes in brief other courts with an international element which have been established to investigate and prosecute international crimes. Part D discusses the substantive law of international crimes. Chapters 10 to 13 cover genocide, crimes against humanity, war crimes and aggression; Chapter 14 introduces the subject of transnational crimes, and takes as examples terrorist offences and torture. Part E is concerned with the principles (in Chapters 15 and 16) and the procedures (in Chapters 17 and 18) used in international prosecutions. Part F considers various aspects of the relationship between the national and international systems: State cooperation with the international courts and tribunals (in Chapter 19) and immunities, in relation to both national and international jurisdictions (in Chapter 20). We end with our conclusions in Chapter 21, which contains our assessment of the development of international criminal law and its institutions and our forecast for the future.

The website which accompanies this book provides access to documents to which reference is most frequently made and material which may be useful in teaching. It also sets out questions which invite the reader to engage in further reflection and discussion of various issues in each of the chapters of the book.

The authors have all taught, to a greater or lesser extent, in international criminal law courses. Three of us took part in the negotiations on the International Criminal Court and participated at the Rome Conference. Some of the comments in this book rely directly on our experience in this capacity.

We have all had an input into each chapter. Each of us drafted a number of chapters, which were circulated and commented upon by the other three. Each chapter has been the object of intensive discussion amongst all of us to achieve as much coherence among our views as possible. We have attempted to produce a book which reads as a coherent whole, rather than as a collection of separate papers from different writers. Of course, with four authors, complete consensus on every matter of substance was neither possible nor expected and the views expressed in individual chapters are therefore those of the author of that chapter, and not necessarily of the group as a whole. The responsibility for Chapters 2, 3, 6, 7, 15 and 16 rests with Robert Cryer, for Chapters 4, 5, 9, 17, 18 and 19 with Håkan Friman, for Chapters 11, 12 and 20 with Darryl Robinson and for Chapters 8, 10, 13, and 14 with Elizabeth Wilmshurst. Chapters 1 and 21, which express the views of us all, were written by Rob and Elizabeth (Chapter 1) and by Rob (Chapter 21). Elizabeth has also had the responsibility of keeping us all together and seeking a consistent text.

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