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978-1-107-06590-1 - An Introduction to International Criminal Law and Procedure: Third Edition

Robert Cryer, Håkan Friman, Darryl Robinson and Elizabeth Wilmshurst

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AN INTRODUCTION TO INTERNATIONAL CRIMINAL LAW AND PROCEDURE

The international criminal courts and tribunals which deal with perpetrators of atrocities are an established part of the effort to bring an end to impunity for international crimes. This leading textbook gives an authoritative account of international criminal law, and focuses on what the student needs to know – the crimes that are dealt with by international courts and tribunals as well as the procedures that govern the investigation and prosecution of those crimes. The reader is guided through controversies with an accessible, yet sophisticated, approach. The four authors have rich experience as lawyers in this field, as teachers of the subject, and as negotiators at the establishment of the International Criminal Court (ICC). The book covers new developments in the case law and the practice and is essential reading for students and teachers of international criminal law and international relations. It is supplemented by a package of online resources (www.cambridge.org/law/cryer3), which offers convenient access to primary sources, excerpts for supplementary reading, problems and questions for reflection and discussion, and materials for exercises and simulations.

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University Printing House, Cambridge CB2 8BS, United Kingdom

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www.cambridge.org

Information on this title: www.cambridge.org/9781107065901

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First published 2007

Second edition 2010

Third edition 2014

Printed in the United Kingdom by TJ International Ltd. Padstow Cornwall

A catalogue record for this publication is available from the British Library

Library of Congress Cataloguing in Publication data

An introduction to international criminal law and procedure / Robert Cryer, Håkan Friman, Darryl Robinson, Elizabeth Wilmshurst. – Third edition.

pages cm

ISBN 978-1-107-06590-1 (hardback)

1. International crimes. 2. Criminal procedure (International law) 3. International criminal courts. I. Cryer, Robert, author.

KZ7000.I587 2014

345–dc23

2013048896

ISBN 978-1-107-06590-1 Hardback

ISBN 978-1-107-69883-3 Paperback

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Preface to the Third Edition

Our intention for this third edition is the same as it was for the first two: to provide 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 touch on terrorist offences, torture, and transnational crimes which are not within the jurisdiction of the principal international institutions.

International criminal law is now a vast subject, even in 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, and are grateful for those that we received on the first two editions. We have sought to be succinct rather than simplistic in our presentation. We have included 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 Master’s course in international criminal law. Part A is introductory. Following a discussion in Chapter 1 of what we mean by international criminal law, of some of its most fundamental principles and something of its philosophy, we consider in Chapter 2 the objectives of this body of law. 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 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

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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 discusses briefly terrorist offences and torture. Chapters 15 and 16 introduce the principles of liability and defences, respectively. Part E is concerned with the processes of international prosecutions: Chapter 17 gives an expanded treatment of the procedures, Chapter 18 discusses the role of victims, and Chapter 19 deals with sentencing. Part F considers various aspects of the relationship between the national and international systems: State cooperation with the international courts and tribunals in Chapter 20; and immunities, in relation to both national and international jurisdictions in Chapter 21. Amnesties and other alternatives and complements to prosecutions are considered in Chapter 22. We end with our conclusions in Chapter 23, which contains our assessment of the development of international criminal law and its institutions and our forecast for the future.

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 as well as in the subsequent Preparatory Commission and in other advisory roles. 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 1, 2, 3, 6, 7, 15, 16 and 22 rests with Robert Cryer, for Chapters 5, 17, 18, 19 and 20 with Håkan Friman, for Chapters 11, 12 and 21 with Darryl Robinson and for Chapters 8, 10, 13, and 14 with Elizabeth Wilmshurst. Chapters 4, 9 and 23 have had input from various of us over the different editions. Elizabeth has taken a co-ordinating role. The chapters have been updated to reflect major developments since the second edition and with an increased focus on the International Criminal Court. Taking into account valuable comments that we have received on the earlier editions, we have expanded the discussion of issues such as the philosophy of international criminal law (Chapter 1) and the sources of international criminal procedures and the rights they incorporate (Chapter 17).

We express particular thanks to Sinéad Moloney of Cambridge University Press.

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Cambridge University Press

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