

Book reviews

Book Review: Helmut Satzger: International and European Criminal Law

**C.H.Beck, Hart and Nomos, 2012, 301 pages
[ISBN 978-3-406-59478-6]**

For those not so comfortable with the German language, the English version of this book is finally available. This is great news and allows even more readers to acquaint themselves with the work of Satzger. The English version of the textbook is an international version of the German one, therefore also consisting also of some new parts in comparison to the German. The book is comprehensive, and consists of three main parts; jurisdiction and territorial scope of criminal law, European criminal law (widely defined) and international criminal law.

The book begins with a brief introduction, where the terminology is explained and the division of the different branches of international criminal law in a broad sense is presented. The first part then starts with the criminal jurisdiction and territorial scope of criminal law (§ 3 and § 4). Here, Satzger begins with the application of national criminal law to cases of an international character, before moving on to the different jurisdiction principles. The author discusses the flag principle, the active and passive personality principles, the protective principle and the universality principle. These principles are first analysed, after which their implementation in national criminal law is presented, including various European states. This highlights the nature of the book as an international version, as Germany is only used as one example among many others, and the reader gets an insight into different systems implementing the various principles. The analysis of the universality principle and its implementation is of particular interest. In the end, Satzger raises the question of an existing, or perhaps developing, principle of protection of European Union interests, which is, of course, very interesting and thought provoking.

The second part of the book, on European criminal law, is the reviewer's favourite part. Seldom is European criminal law demonstrated so well. To begin with, the term European criminal law is defined and explained in relation to the content (§ 5). Then supranational criminal law (within European criminal law) is analysed (§ 6). This consists mainly of the former EC criminal law competence and the significance of the fact that the TFEU opens up for supranational European criminal law is addressed. Here, however, Satzger points out the importance of the

principles of subsidiarity and proportionality and ultima ratio, which should still function as a prevailing principle at the EU level as well. The Luxembourg rules for an EPPO or the current proposal by the Commission are not included here, as the book came out in the middle of 2012.

Satzger then continues with what he calls the influences of European law on domestic substantive criminal law, which is mainly EU substantive criminal law harmonisation (§ 7). In approximately 50 pages he focuses on the EU substantive criminal law, and Article 83 TFEU, in particular, is thoroughly analysed. It is interesting to note that in relation to minimum requirements for criminal law set by European law the author discusses the effective, proportionate and dissuasive criterion, (Greek maize case) and here considers that the sanction should have a both specific and general deterrent effect and that the sanctions should further be suitable for realising the goals of the protected European provisions or interests. This is very interesting, as one might ask which these goals are and who sets them. When Satzger makes a brief excursion into a concept for a European criminal policy, these matters are partly analysed. He further discusses references to European law in domestic legislation (previously called blanket-legislation) where the possible problems of such in reference to legislation are analysed. As the references point to an autonomous legal order (the European Union legal order), in no way is this form problem-free. Finally in this part, Satzger focuses on the influence of European law in the interpretation and application of domestic substantive criminal law. Immensely important, not only from a legal source and interpretation point of view, this topic is of big relevance: direct effect, supremacy and possible conflicts between domestic and European law, are but a few of the problems. Additional areas such as definitions and limiting or expanding criminal liability in addition to crimes of negligence highlight the complexity of this matter.

The next chapter in this part is called criminal law enforcement in Europe (§ 8). In this part, the text is divided into four main sections, consisting of EU institutions within criminal law, cooperation based on mutual recognition, approximation of criminal procedural law and *ne bis in idem*. The part on institutions is quite brief, but thankfully also includes a section on the future EPPO. Mutual recognition is dealt in a bit more detail, and includes the EAW and its implementation as the main illustration of the principle. Additionally, some other instruments are focused on, before moving on to the codification of the principle with the Lisbon Treaty. A more in depth analysis of mutual recognition would, of course, have been of interest, but limiting it to the current seems motivated in relation to the range of the entire book. The approximation of criminal procedural law is analysed in accordance with the current division of Art. 82(2) TFEU, followed by an analysis of the emergency brake. The *ne bis in idem* principle is examined afterwards and includes both Art. 54 CISA and Art. 50 CFR, commenting on the relationship between these two articles. The fact of the EU criminal system not yet being a complete system is commented on, as it influences the form and range of the

application of *ne bis in idem* within the EU, and the different parts of *ne bis in idem* are further studied.

The European Convention of Human Rights is focused on thereafter (§ 9). As is rightly pointed out at the beginning, the ECHR and the case law of the ECtHR have a significant impact on domestic criminal law and the Council of Europe, being the forerunner in many areas of cooperation, is visible today within the EU. The ECHR is analysed in relation to the guarantees relating to criminal law. The ECHR applies the principle of minimum standard with regard to substance which means that the domestic legal orders can have a higher degree of guarantees. Analysed areas include the right to life, the prohibition of torture, the rights of an arrested individual, the right to a fair trial, the presumption of innocence, the *nulla poena sine lege* principle, the right to appeal in criminal matters and *ne bis in idem*. The presentation includes many examples and demonstrates well the range of the ECHR and the case law of the ECtHR. As can be noted, the minimum protection has influenced the EU legislator in relation to criminal law, which can be seen today as most of the proposed legislation regarding criminal procedure usually adheres to this principle, establishing only minimum protection, and even falling back on the ECHR standards. This can be questioned as an approach within the EU cooperation, but can be understandable from the point of view of many different legal orders having different emphasis and regulations on criminal procedure. The chapter is concluded with some comments on the procedural law and the organs of the ECHR, where the judgment of the ECtHR and its effect are discussed.

The third part on international criminal law then follows being rather comprehensive and consisting of six main chapters. Starting with a general introduction to international law which lays down the fundamentals of international criminal law (§ 10), the presentation continues with a chapter on the history of international law (§ 11). This chapter covers the development from before 1919 until ICTY, ICTR and other hybrid courts. The next chapter is devoted to the ICC (§ 12) and consists of a comprehensive overview of the court. Matters such as jurisdiction, the principle of complementarity, procedure and sanctions and enforcement are examined. Lastly, a brief part on the evaluation of the ICC in terms of legal policy follows where the effectiveness of the court is discussed in relation to its preventive effect, which depends on the cooperation of states. This can, although perhaps not directly, also be considered relevant for the effectiveness of EU criminal law and makes the reading even more interesting.

The general part of international criminal law is then analysed (§ 13). The general principles of international law are analysed from the ICC statute point of view and after briefly analysing the applicable law, rules of interpretation in international criminal law are analysed. Interpreting international (criminal) law is also fascinating for those for whom EU criminal law is their primary interest, as similar interpretation mechanisms may be present in the international setting. Satzger further focuses on the *nullum crimen, nulla poena sine lege* principle, which is slightly different in the international criminal law setting than that which is purely national.

Individual criminal responsibility is briefly dealt with after which the structure of international criminal law offences and forms of participation are focused on. In relation to the structure of international criminal law offences, the grounds for excluding criminal responsibility are further focused on and in relation to participation, perpetration and accessoryship are analysed. Last of all, some comments are made on the superior responsibility, attempt and omission.

This is followed by a chapter on the special part of international criminal law (§ 14). This chapter is encompassing and systematically analyses genocide, crimes against humanity, war crimes and aggression. The crimes are analysed through the structure of the crime, the material and mental elements and in relation to war crimes, the objective and subjective requirements for an armed conflict are also included. The last chapter (§ 15) concerns the implementation of the ICC statute into national law and looks upon the German solution in particular. After presenting different incorporation possibilities, this chapter looks at the German implementation as a model and discusses the national implementation chosen by the German legislator in detail. Furthermore, some particular German questions are dealt with, such as the conflict between the principle of complementarity and the German Grundgesetz and the principle of universality extending the traditional rules on the scope of application of German criminal law. Some concluding remarks are made in relation to how the German incorporation works and noting the German example useful as a model due to its clear and systematic structure.

The book has a German approach as regards its composition, it is accurate and logically systematised, and it includes many headings and sub-headings, which accurately point the reader to the right part of the book, if an accurate answer to a question is sought after. It includes pictures and graphs and examples where necessary, in order to further explain relevant questions and topics and it manages to communicate well the sometimes complex nature of both European and international criminal law to the reader. The examples, in particular, are both welcome and illustrative. Furthermore, Satzger has managed to maintain his concise style in the English version too, which means that the book contains almost nothing superfluous. He manages to sum things up in a concrete and simple way, which is impressive. That said, there are, of course, certain aspects of the book which could have been focused on further. As it stands, it manages to give a good overview without being unduly long. The book is most definitely worth a read even for those with more specific interests in the topics covered, and it will serve well as a textbook in the world of international and European criminal law.

In Bergen,
Annika Suominen

»...still the best commentary on the ICC...«

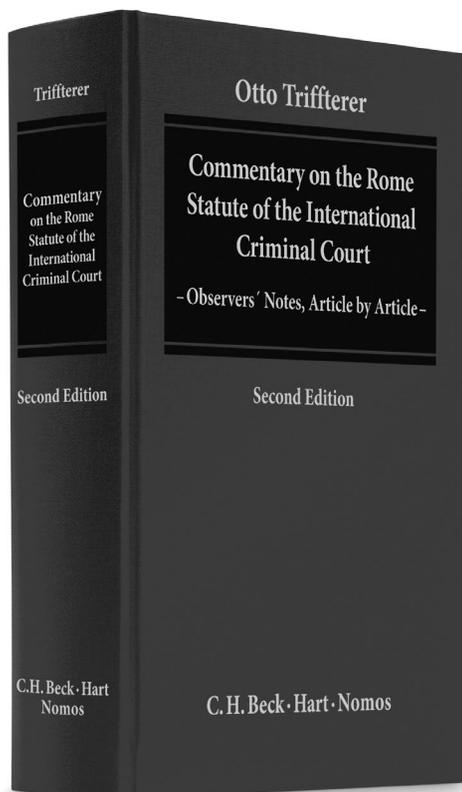
Koninklijke Brill, International Criminal Law Review 9, 2009

This Commentary

contains an English-language article-by-article analysis of the Rome Statute as well as the »Elements of Crime« and the »Rules of Procedure and Evidence«, adopted by the Assembly of States in 2002, and the »Regulation of the Court«, adopted by the Judges of the ICC in 2004.

Key points

- A substantially revised and significantly amended version of the first edition which was published in 1999.
- With contributions from leading scholars and practitioners in the field of international criminal law.
- The Commentary will be an invaluable aid to all practitioners and scholars dealing with the Rome Statute and the jurisprudence established by its »Complementarity Regime«.



The second edition

incorporates the jurisprudence of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Tribunal for Rwanda (ICTR) as well as other international, »semi-international« and national courts and the relevant literature since 1999.

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An introduction – concise and straight to the point.

About the work

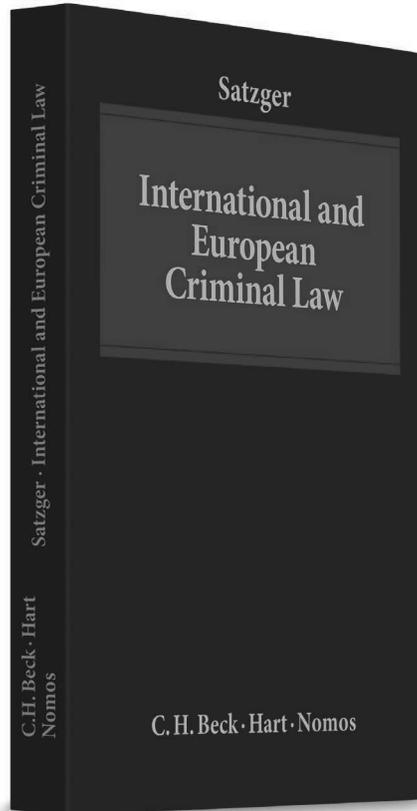
This work highlights the international aspects of criminal law, so far engrained in national law. The book is designed to give a first and solid introduction to international criminal law, using numerous examples and references to schemas and charts. It also caters for the needs of students and academics in this field.

Pros at a glance

- Easy to understand
- Concise and straight to the point

Focus is laid on:

- Rivalry of orders of criminal law
- »European Criminal Law« dealing with the question, how far the EU may or may not create or harmo-nise criminal law
- Formation of a European Criminal Procedure Law
- Non bis in idem-principle
- Guarantees under the European Convention of Human Rights
- Principles of International Criminal Law
- Procedures and substantive law of the International Criminal Court (ICC).



About the author

Helmut Satzger is professor of German, European and International Criminal Law at Munich University.

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