Book Review: Kai Ambos, Fälle zum Internationalen Strafrecht, München 2010, C. H. Beck, pp. 168, EUR 24.90, ISBN 978-3-406-60527-7I.

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I.

Each European state has its own way of examining law students. In general, students must usually answer abstract questions about legal problems recurring in previous cases pertinent to each individual question. In this context, "case law" is the key phrase. In other countries, students must know the law word by word, and be prepared to reproduce this knowledge verbatim in a written test.

The German way, however, is quite distinct; indeed, in it is also common for students to prove their knowledge by "solving cases". In the context of criminal law, this means that students are given the facts of a case, and then they have to analyse it in order to judge whether the perpetrator committed any crimes according to German law. The students must use a very specific style of writing – the so-called *Gutachtenstil* – as a basis for their arguments.

Nowadays a variety of "Fallbücher", i. e. books containing cases and elaborate sample solutions, exist in order to enable students to get into the routine of solving cases and – at the same time – to give them an opportunity of improving their knowledge in that specific field. These are quite different from text books[1]; "Fallbücher" are intended to help students learn the skills they need instead. These books, while primarily addressed at students, can also help practicing lawyers, providing a concise, solid overview of highly relevant and contemporary problems in law because they set priorities in a specific field of law. In addition, practicing lawyers are also able to keep up-to-date on what students are learning.

II.

With respect to European and International law – which is, indeed, quite a relatively new field of law in comparison to others –, only one case book currently exists on the German book market, and it is written by *Professor Kai Ambos*. The first edition of the "Fälle zum internationalen Strafrecht" ("*Cases in International Criminal Law*") was published in 2010, (by C. H. Beck). It is conceived as an addition to his textbook, called "Internationales Strafrecht" ("*International Criminal Law*").

"Fälle zum internationalen Strafrecht", however, contains ten cases. It starts with cases issuing the principles of criminal jurisdiction, followed by cases about the European Criminal Law. Finally, *Ambos* focuses on International Criminal Law.

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[1] Like *Ambos*, Internationales Strafrecht, 3rd edn., München 2011 or *Satzger*, International and European Criminal Law, 1st edn., München 2012.

According to information provided by *Ambos,*[2] the majority of these cases are based on former examinations at the Georg-August-Universität Göttingen. Having laid down the facts of a case, the reader is asked general and specific questions about the events in order to solve the case. Outlines of the expected solutions are given, and sample solutions are also provided. At the back, the reader can find a two-sided index for quick references and/or specific search.

1.

The initial case in the book – quite a short one – deals with problems involving the application of German criminal law and refers to different principles of criminal jurisdiction (case 1); in particular to the principle of territoriality, the nationality principle and the passive personality principle. *Ambos* thereby already makes mention of the "most important" principles in the beginning. A description of the "less important" application principles will follow later (see below II. 5.).

In case 1, the *author* also touches upon the issues relating to mutual assistance in criminal matters, which is the only detour *Ambos* makes into the law of mutual assistance. He shows the specific differences between a non-European Union country (Turkey) and a country which is part of the European Union (The Netherlands). *Ambos* points out several legal bases and shows the consequences, thereby giving the reader a clear comparison of the different legal situations.

2.

Following on from these cases (case 2), *Ambos* introduces a lengthy case that incorporates the general changes wrought by the Lisbon Treaty of 2009. In doing so, he describes the situation before and after . In particular, he focuses on the new areas of competency in which European Union legislators can influence policies related to criminal law among European Union member states. *Ambos* remarks a grounded in the Lisbon Treaty. On this point, he is *d'accord* with the prevailing opinion of leading academic experts that there are some new and/or changed paragraphs which could mean an opening of the legislative competence in criminal law at the European level.

3.

Case 3 deals with the new status of the European Convention of Human Rights (ECHR) – which has also changed after Lisbon –, and students' knowledge of the proceedings of the European Court of Human Rights (ECtHR) is tested and furthered. Furthermore, a detailed problematisation of the torture issue is provided in the ECtHR case *Gäfgen* vs. *Germany*. Unfortunately, the judgement of the Grand Chamber in June, 2010[3], is not yet included in the solutions argumentation, but will supposedly be included in the next edition. What the case does accomplish is

[2] Cf. p. 1.
[3] ECtHR, *Gäfgen* vs. *Germany*, Judgement from 1st June, 2010, Application No. 22978/05.

the introduction of how students must prove a right protected by the ECHR, which is quite important because of the rising importance of the ECHR as a scale of interpretation of domestic criminal law.

4.

The detour into European Law ends with case 4, which provides a detailed problematisation of the *ne bis in idem* principle; in particular, the impact of Article 54 of the Convention implementing the Schengen Agreement (CSA) in the § 153 a German Criminal Procedure Code (*Strafprozessordnung*). Owing to the new legal nature of the Fundamental Rights Charter (FRC) after , *Ambos* also refers to Article 50. He tries to define the relation of this Article to Article 54 CSA, and gives a good overview of the discussion between the academic minds. Finally, he comes down on the side of those who say that Article 50 FRC blocks the application of Article 54 CSA.

5.

The 5th case repeats the principles of criminal jurisdiction of the German Criminal Code (*Strafgesetzbuch*), which were shown at the start. *Ambos* is following the motto "skill comes with practice". Next to it, he adds the "remaining" principles e. g. the flag principle and the representation principle.

This case also tries to show the consequence of collision in criminal jurisdiction in comparison with International Private Law, which gives a better understanding of how the rules of applicability function between countries.

6.

The 6th case is somewhere between international and national criminal law. The reader gets an introduction into the German Criminal Code for International Law (*Völkerstrafgesetzbuch* – VStGB) which was passed because of the settlement of the ICC in 2002. The *Völkerstrafgesetzbuch* is national law and fulfils the principle of complementarity of the Statute of the International Criminal Court (ICC-Statute).

The case is based on a relatively controversial German debate. Even with the changed names *Ambos* employs for the parties involved (*Colonel Groß* instead of *Colonel Klein* or *Minister Alt* instead of *Minister Jung*)[4] it is obvious that he wants to examine the events in Afghanistan from September 2009, in which a German colonel ordered a bombing attack on an oil truck. For this case, *Ambos* simplifies the situation, and bases his solution on this situation. In contrast to the original case, he arrives at the conclusion that the Colonel is liable for prosecution because of § 11 VStGB.[5] *Ambos* is due a great deal of credit here, because he illustrated a detailed and well-argued discussion of this case, providing guidance for more than just students alone. He is also

[4] The names just describe the opposite of the original.

[5] Because of a lack of suspicion that *Colonel Klein* acted irresponsibly, the prosecutor ended the investigation on 19th April, 2010.

bringing forward the academic discussion on an issue which is still highly controversial; especially taking into considering recent events in German politics.[6]

7.

International Criminal Law is dealt with from Cases 7 to 10. It mainly deals with the proceedings before the International Criminal Court settled in . To get an initial taste of its Statute, *Ambos* tries to explore the elements of offences.

In case 7, the *author* begins with well-structured discussions about the several core crimes (genocide, crimes against humanity and war crimes), showing how difficult is it for students to prove each element of these grave offences in the correct way. The particular themes *Ambos* homes in on include International Law and its role in international and internal armed conflicts. He also argues the principle of "Tatherrschaft kraft organisierter Machtapparate"[7] and its applicability in International Criminal Law, which is quite important as well because international crimes are usually characterized by the strong cooperation of an apparatus of power.

8.

The 8th case tests the reader's knowledge regarding the issues concerning the recruitment of child soldiers and the punishability of these acts. Article 8 (2) (e) (vii) ICC-Statute differs between the conscripting and enlisting of children in an armed group or their participation in hostilities. *Ambos,* therefore, has to draw a tough distinction between the different kinds of "usage" of children. This case gives a good introduction in this sensitive field of criminality.

9.

Case 9 repeats the already known elements of different war crimes; the thematic priorities in this case are the direction of military attacks against buildings, and the differences between civilian and military attacks. The case also contains the highly relevant issues concerning the immunity of presidents or other persons in leading positions before the ICC. *Ambos* comes to the solution – in harmony with international jurisdiction – that the position as a head of state or a comparable position is not an obstacle to prosecute.

10.

The last case of the book is tests knowledge on the disappearance of persons (Case 10), which can be found in Article 7 (1) (i) ICC-Statute, in particular. He also refers to torture crimes.

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[6] On 10th August, 2011 the final investigation reports about the happenings of 4th September, 2009 were published by the opposition parties in the German parliament (*Bundestag*). On 27th October, 2011, there was another debate in the *Bundestag* about the final reports (see the parliamentarian printed papers: BT-Drs. 17/7400).

[7] This principle is based on an assumption that some crimes are characterized by execution secured by almost automatic compliance with the orders. It was developed by the German academic *Professor Dr. Dr. h. c. mult Claus Roxin*.

Furthermore, the last case is characterized by focusing on the individual responsibility of the offenders. *Ambos* demonstrates the usage of Article 25 (3) (a) ICC-Statute (acting as a co-perpetrator). Afterwards he gives a detailed overview of the controversial model of the Joint Criminal Enterprise in its different forms (basic, systematic and extended form).

Finally, since there is the principle of *nulla poena sine lege,* the author also addresses this with a particular regard for the fact that the ICC began its jurisdiction on the 1st July, 2002.

III.

Formally, the solutions are marked by detailed footnotes that the reader can use as a starting point for further research, if interested. Sometimes, *Ambos* digresses due to the very specific nature of certain issues; this is interesting from a practicing lawyer's point of view, and provides a closer look into the specific problem at hand, albeit this is not generally requested of students in an examination.[8]

Since *Ambos* is a German academic and the book is primarily addressed at Germans, he refers to German law quite frequently. This may seem a bit disconcerting. However, for readers who wish to get an internal view of German criminal law, this book provides a wonderful opportunity to do so.

Moreover, the chosen cases are highly relevant for examinations. *Ambos* tried to find a balance between European and International Criminal Law in an extraordinary way, all the while including issues concerning jurisdiction. Even though it is not a text book as such, it is characterized by a broad standard of facts. That said, with regard to the current development in International Criminal Law – which is always highly relevant for examinations – it is recommendable that *Ambos* enhances the book with several issues: e. g. the democratic movement in the Arabian countries and the political and legal reaction that give rise to issues regarding the relation between the ICC and the Security Council of the United Nations. As there was the Kampala Conference, it would be interesting if *Ambos* were to show sample solutions for the applicability of the core crime of Aggression as well.

The price of EUR 24.90 seems a little too steep, in comparison to other casebooks. However, putting this aspect to one side (one which could be considered minor in the overall scheme of things), the book is highly recommendable for both students and practicing lawyers. Students are able to use this as a workbook with many issues that are relevant to their examinations; it provides excellent preparation even if the student had not had that much contact with European or International Criminal Law before; on the other hand, it offers the practicing lawyer the chance of becoming knowledgeable about both European and International Law.

All in all, it is well worth taking a look at this highly recommendable book.

[8] That is what *Ambos* already clarified in the introduction of the book, cf p. 1.