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国际刑法评论

China Review of International Criminal Law

第2卷

◎主 编 赵秉志 卢建平

◎执行主编 王秀梅



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《国际刑法评论》导言

在世界多极化和经济日益全球化的背景下，国际刑法以其内容的综合性和高度兼容性鲜明地维护着国际社会法治的进步、和平与发展，国际刑法也因其自身的这一特色而受到世界各国的广泛重视。然而，近年来，人类在追求全球一体化进程的同时，也饱尝了各种严重国际犯罪和跨国犯罪所带来的负面影响。这种境况同样促使国际社会不断改革、更新国际刑事司法制度，以便尽快适应客观形势发展变化的实际需求。国际刑事法院的建立，联合国 13 个反恐公约的缔结和全球反腐败公约的顺利通过，为有效地惩治与防范跨国犯罪和国际犯罪发挥着重要的职能，相关问题也成为国际社会广泛探讨的热点问题。

国际刑事法院可谓当代国际刑法领域的一个崭新课题。

第二次世界大战期间惨绝人寰的大屠杀在上演历史悲剧的同时，也从另一个角度激发了国际刑法的迅猛发展。此后的纽伦堡和东京审判将国际刑法的发展推上第一个历史发展高峰，并形成了一系列国际法原则，如个人刑事责任等。事隔 50 年之后，前南斯拉夫、卢旺达、乌干达、刚果、中非共和国和苏丹达尔富尔地区发生的武装冲突再现了人类历史上灭绝种族和危害人类的悲惨画面。为了使人类不再重蹈覆辙、重历此类狞恶之浩劫，国际社会通过不同方式分别建立了前南斯拉夫和卢旺达特设法庭、东帝汶和柬埔寨特设法庭，以审判那些人类的罪人，但这些法庭终因时间和地理等诸多条件的限制而不能充分维护世界的正义与和平。建立常设国际刑事法院，让人人享有正义、让犯罪者不再逍遥法外、结束武装冲突、弥补特设法庭的不足、吓阻未来的战犯，已经成为国际刑法发展的必然趋势。

毋庸置疑，任何一个新鲜事物的产生总需要一个得到国际社会广泛认同和达成共识的过程。中国作为设立国际刑事法院《罗马规约》的非缔约国，对《罗马规约》本身存在问题的研究也逐渐升温，尤其关注的问题是

从法理角度分析中国未能批准《罗马规约》的障碍，权衡中国批准《罗马规约》的利弊。近年来，北京师范大学刑事法律科学研究院国际刑事法院项目办公室的学者们数次以国际刑事法院为题举办大中型的国际学术研讨会，多次邀请国内外专家学者举办论坛，撰写和翻译出版了多部研究成果，在促进国际刑事法院全球发展方面发挥着积极的作用。

恐怖主义犯罪及其惩治防范是当代国际刑法领域的另一个极其重要的新议题。

恐怖主义的形成和发展与宗教、民族纷争、领土争端等有着千丝万缕的联系。恐怖主义不断地制造出人类历史上的悲剧，接踵而至的美国的“9·11”恐怖主义袭击事件（2001年）、西班牙马德里“3·11”连环恐怖爆炸事件（2004年）、英国首都伦敦的“7·7”地铁站和公共汽车多起恐怖爆炸事件（2005年）等，给一些国家和人民带来挥之不去的恐惧阴影。这些事件不仅剥夺了大批无辜者的生存权利，引发金融动荡、社会混乱，进而对国家的政局稳定、经济发展等造成巨大负面影响，还进一步恶化地区乃至世界环境。如何认清恐怖主义对全人类的现实的和潜在的危害性，如何针对恐怖犯罪这一全球“公害”“对症下药”，日益成为国际社会迫切需要解决的棘手问题。

北京师范大学刑事法律科学研究院通过举办研讨会、讲坛、撰写和翻译有关国家立法及学术研究成果，以及向国家有关部门提交研究咨询报告等方式积极建言献策，与世界人民共同致力于全球反恐斗争。

腐败犯罪及其惩治防范是国际社会的另一个关注的新视点。

腐败真可谓当前国际社会的“政治之癌”，更是一个无形的杀手，它的泛滥正在危及社会的稳定和治安，破坏民主和道德的价值观，危害社会、经济和政治发展。2005年10月27日，中国第十届全国人大常委会第十八次会议审议并批准了第一项全球性的反腐败法律文件——《联合国反腐败公约》。该公约设立了针对腐败犯罪的预防机制、刑事定罪和执法机制、国际合作机制、资产追回机制和履约监督机制，不仅为各国打击腐败犯罪提供了一个统一标准，也为中国开展国际合作、遣返外逃腐败犯罪人员、追缴被非法转移的腐败资产提供了有益的法治经验，有利于中国建立健全教育、制度、监督并重的腐败预防和惩治体系。专家学者们应当对反腐败议题作出理论与实践相结合的思考和研究性成果的贡献。

由北京师范大学刑事法律科学研究院主办，国际刑法学协会中国分会协办，贵州大学法学院承办的于2006年2月在贵阳举行的“当代国际刑法新视野”国际学术研讨会，业已圆满地落下了帷幕。本次研讨会以涉及现代国际社会政治、经济和法治诸领域的国际刑事法院、国际反恐和反腐败这些新问题为议题进行了较为深入细致的研讨。会议共收到论文42篇。《国际刑法评论》第2卷正是与会专家学者提交论文的集成。

在这本颇具时代特色的文集出版之际，我们要向会议的协办单位国际刑法学协会中国分会，尤其要向会议的承办单位贵州大学法学院，向贵州大学法学院院长肖中华教授及其所领导的该院诸多师生，向支持本次会议的马克昌法学基金会，以及为此次会议和本文集作出贡献的北京师范大学刑事法律科学研究院的学者们和博士生郑延谱、硕士生赵晨光等同仁，向热情支持本书出版的中国人民公安大学出版社的领导和责任编辑，表示我们诚挚的谢忱。

《国际刑法评论》编辑委员会

2006年9月

Preface to China Review of International Criminal Law

With further globalization of the economy and culture in the world, international criminal law, for its integrative and compatible contents, plays a prominent role in protecting the progress, peace and development of the rule of law in international society, simultaneously has attracted extensive attention from all countries in the world for its such features. However, in recent years, we have been fully suffering the disasters and pains resulted from various serious international crimes and transnational crimes in the process of globalization, which also urges the international society to reform systems of international criminal justice so as to meet the practical requirements for adapting to the development of objective situation as soon as possible. The establishment of ICC, the conclusion of 13 UN anti - terrorism conventions and the passage of global anti - corruption covenant has played an important part in effectively combating and preventing international crimes and transnational crimes, while the issues pertaining to them have aroused heated debates among the international society.

Issue of ICC has become a new subject in the area of modern international criminal law.

While the human tragedy of extremely cruel massacres was staging during the World War II, it inspired, consequently, the fast development of international law. Nuremberg Trial and Tokyo Trial have pushed the development of international criminal law to a historic peak and developed a series of international principles such as personal criminal liability etc. A half century later, the disastrous crimes of genocide and crimes against humanity reoccurred in the armed conflicts in former Yugoslavia, Rwanda, Uganda, Congo, Central Africa and Sudan as well. In order to prevent the human being from re - suffering such tre-

mendous catastrophe, the international society has established respectively the International Tribunes for the Former Yugoslavia and Rwanda and the Special Courts for East Timer and Cambodia to trial those criminals, although such tribunes and courts cannot fully maintain the justice and peace of the world due to their temporal and geographic limitations. It has become an inevitable trend in the development of international criminal law to establish a permanent international criminal court so as to have every one enjoy the justice and every criminal controlled under law, to end armed conflicts, make up the deficiency of special tribunes and deter the potential war criminals.

Undoubtedly, the development of each fangle has to experience a certain period for the international society to recognize and accept it. Although China is not a state party of Rome Statute of the ICC, Chinese scholars are increasingly interested in the study of the existing problems of Rome Statute, particularly in analyzing the impediments that prevent China from approving and evaluating the advantages and disadvantages when China approve it in perspective of jurisprudence. These years, the scholars of the ICC Project Department of the Research College of Criminal Jurisprudence at the Beijing Normal University, by holding international symposiums on the issues of ICC, frequently inviting and hosting specialists from home and abroad to make lectures and writing and translating many research books, play an active part in facilitating the global development of ICC.

The crime of terrorism and its prevention and punishment is another very important and new subject in the area of modern international criminal law.

The formation and development of terrorism is closely related with such conflicts as religion, nation and territory as well. Terrorists endlessly committed the frightening calamities in human history, the successive occurrences of the terrorism attack in USA on September 11, 2001, the successive terrorism explosions in Madrid of Spain on March 11, 2004, the terrorism explosions at Subway Station and in buses in London, capital of UK on July 7, 2005 and as well have brought some countries and their people with lingering emotion of dread. Such events have not only deprived the lives of a number of innocent people, aroused finan-

cial turbulence and social chaos, even brought tremendous side effects upon the stability of political situation and the development of social economy, but also further deteriorated regional and world environment. How to recognize the practical and potential dangerousness of terrorism imposed upon human being and how to cope with such global crime of terrorism are becoming urgent difficulties that the international society has to resolve.

The Research College of Criminal Jurisprudence at the Beijing Normal University, in such ways as holding symposiums, delivering lectures, writing academic research achievements and translating the legislations of foreign countries, and submitting consultant research reports to central departments as well, is committing to the global cause of anti - terrorism hand in hand with the people in the world.

The crime of corruption and its prevention and punishment is also a new subject for international society.

Corruption is a “political cancer” and an invisible killer in modern international society, its? rampancy is endangering the social stability and public security, destroying the value of democracy and morality and jeopardizing social, economical and political development. On October 27, 2005, UN Convention against Corruption, the first global legal document of anti - corruption, was reviewed and approved at the 18th session of the 10th national people’s congress. UN Convention against Corruption adopts preventive anti - corruption mechanism, criminal conviction and law enforcement mechanism, international cooperation mechanism, property recovery mechanism and obligation implementation supervision mechanism, which not only sets up an anti - corruption criterion for all countries, but also provides China with useful legal experiences in international cooperation, extradition and transfer of corruption criminals fled abroad and recovery of illegally transferred property, which is helpful for China to establish and perfect the prevention and punishment system that pays equal attention to anti - corruption education, system and supervision. The scholars and specialists have the responsibility to research the issues pertaining to anti - corruption in the way of integrating theory with practice.

The International Symposium on New View of Contemporary International Criminal Law in Guiyang city in February, 2006 was successfully held by the Research College of Criminal Jurisprudence at the Beijing Normal University, co-sponsored by China Branch of AIDP and the law school of Guizhou University, which thoroughly discussed such issues as ICC, international anti-terrorism and anti-corruption as well. China Review of International Criminal Law (Volume II) is mainly a collection of those academic articles submitted in the international symposium.

As this book of epoch characteristics will be published, let's first express our earnest thanks to China Branch of AIDP, Law School of Guizhou University for their co-sponsorship of the symposium, to Dean of Law School of Guizhou University Professor Xiao Zhonghua and his colleagues and students for their excellent jobs they have done and to Me Kechang Law Foundation for the assistance in the conference, to all scholars and Ph. D candidate Zheng Yanpu and Master Candidate Zhao Chenguang from Research College of Criminal Jurisprudence at the Beijing Normal University for their contributions to the symposium and this book, the last but not the least, to the leaders and editors of the Publishing House of People's Public Security University of China for their zealous support in publishing this book!

The editorial board
September of 2006

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