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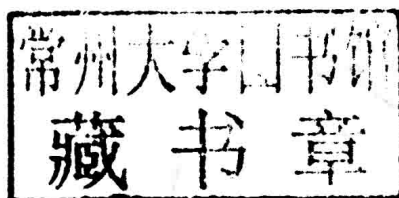
INTERNATIONAL CRIMINAL LAW

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International Criminal Law

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General editor: SIR FRANK BERMAN KCMG QC

This series features works on substantial topics in international law which provide authoritative statements of the chosen areas. Taken together they map out the whole of international law in a set of scholarly reference works and treatises intended to be of use to scholars, practitioners, and students.

In loving memory of my father

Preface

This book gives an account of international criminal law from the perspective of a formalist, positivist public international lawyer. Obviously this is not the only frame of reference that could be brought to bear on the subject. Nor need it be considered a better frame of reference than others. Much valuable work in the field continues to be done by scholars with a background in criminal law and criminal legal theory, by scholars of a critical-theoretical persuasion, and by scholars of a criminological, sociological or other empirical bent. The present study seeks merely to complement these voices with that of what might, with a degree of trepidation and no necessary claim to greater legitimacy, be called mainstream public international law.

As with any field, where one pegs the limits of international criminal law is to an extent arbitrary. This book conceives of the field broadly, as encompassing not only the international law relating to international crimes and international criminal courts (what in French is referred to as '*droit pénal international*') but also the rules of international law governing states' assertion and exercise of their respective national criminal jurisdictions (what in French has been referred to as '*droit pénal international*'). At the same time, for the sake of manageability and focus, the book is organized around international crimes and their suppression through national and international criminal courts. So, for example, while the Special Tribunal for Lebanon is examined in the contexts of the definition of an international criminal court and of the different ways of establishing such courts, it does not, in contrast to the other current and recent international criminal courts, enjoy a chapter of its own, on the technical ground that its subject-matter jurisdiction comprises solely crimes under Lebanese law (although ultimately more significantly on the collateral practical ground of the paucity of its output so far).

In its treatment of international criminal courts, the book concentrates on the more substantive legal issues. Although any question as to the legal powers of a court is in one sense procedural, the focus here is not on what is sometimes referred to as 'international criminal procedure', meaning the respective bodies of rules, regulations, and other directives governing how pre-trial, trial, appellate, and related proceedings are or were to be conducted in each of the international criminal courts that exist or have existed to date. The detailed, often jurisdiction-specific legal issues pertaining to the collection, disclosure, presentation, and use of evidence, to cross-examination, to rights of appeal, and so on, in the context of proceedings before the different international criminal courts tend to go beyond what is of most concern to the public international lawyer on the Clapham omnibus. They also exceed the expertise of the public international lawyer who penned this volume. As a result, procedural matters are dealt with here only to the extent that they implicate more substantive questions of public international law. The same goes, for the most part, for sentencing and the enforcement of sentences, for the

rights of accused and suspects, and for the protection and support of witnesses and victims and the participation in proceedings of the latter. It goes too far for non-penal institutional responses to international crimes, such as Rwanda's *gacaca* courts and other alternative justice mechanisms. (The only intended exception to the last was a chapter on non-penal responses by the various organs and subsidiary organs of the United Nations to actual and alleged international crimes—that is, on various measures in the field of international criminal law, broadly conceived, taken by the Security Council, beyond its establishment and its co-operation in the establishment of international criminal courts and its roles in relation to the International Criminal Court, by the General Assembly, and increasingly by the Human Rights Council. But it became clear while writing the chapter that far deeper research and analysis was needed than time permitted. Should there be a second edition of the book, such a chapter will feature.) None of this, it should be stressed, is to downplay the importance of the omitted topics. A contractual delivery date and word limit, however, mean that a line has to be drawn somewhere, and the point of intersection of the likely interest of the bulk of the book's readership and the outer bounds of the author's expertise seemed a sensible place to draw that line.

In keeping with the formalist outlook of the book, readers will find no discussion of the aims of or functions served by international criminal law (congruence between the two not being self-evident, either logically or observably). Again, this is not intended to imply that such questions are unimportant. But to the putative extent that the aims of international criminal law are any different from the aims of criminal law *tout court*, there is little consensus as to what these particular aims might be, while any intellectually serious account of the functions served by international criminal law demands the skills and knowledge of the socio-legal scholar, the political scientist, the historian and contemporary analyst of the Balkans and central and west Africa, and so on. Suffice here to say that many of the claims made on behalf of international criminal law are either unverifiable or await verification.

As far as can be ascertained, the book reflects the law as it stood on 28 November 2014, although some of the suggested reading at the end of several chapters postdates this.

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