Introduction

Not so long ago, many scholars were sceptical about the question whether such a thing as an international criminal law existed. Few recognised it as a separate legal discipline. This, however, has not bothered treaty makers. In recent years there has been an exponential growth in the number of international instruments that fall within this "discipline". In the United Nations and in the European Union, there has been a dramatic increase in the conventions dealing with various aspects of international criminal law and in fact much of the day-to-day work of these organisations deals with the subject. Norms of international criminal law have gradually become the standard by which behaviour of governments and individuals is assessed. In the process, the general public has become increasingly aware of the existence of international criminal law. 11/9 and the war in Iraq have undoubtedly contributed to this awareness.

International ad hoc international tribunals of the United Nations (the Yugoslavia-tribunal in The Hague and the Rwanda-tribunal in Arusha) have been functioning for nearly a decade and have produced an impressive body of jurisprudence. Despite the opposition of certain States, the (permanent yet "complementary") International Criminal Court is now in operation. Special criminal courts (e.g. the Special Court for Sierra Leone and the panels for serious criminal offences in East Timor) have been created whose mission is to apply norms of international criminal law. The same applies to the special national courts such as the court in Iraq, set up to assess the accountability of Sadam Hussein and other members of his regime for international core crimes such as war crimes, genocide and crimes against humanity.

More and more national courts are, in their day-to-day work, confronted with questions of international criminal law and are called upon to deal with international crimes (e.g. war crimes, terrorism, torture, organised crime, money laundering and cybercrime) and international criminal cooperation (e.g. extradition, mutual assistance and mutual recognition). Despite the reality that criminal justice still operates within national legal systems, international criminal law is increasingly becoming a fact of day-to-day life in an ever-globalising economy. Quite naturally, many law faculties have added international criminal law to their teaching curricula and more and more publications are devoted to the subject, thus reflecting the fact that the "market share" of international criminal law is definitely on the rise.

In recent years, so many instruments have been drafted that is has become difficult to find one's way in the labyrinth of international criminal law treaties. The present collection is meant to guide students and practitioners through this labyrinth. Its focus is on international (universal) and European instruments.

Selecting and arranging conventions is a hazardous exercise. In this book, the following structure has been adopted. The first chapter opens with the most important *general human rights instruments.* In the global village, international human rights constitute the basic *acquis* of defendants as well as victims in international criminal proceedings, before both international and national courts applying norms of international criminal law. The second chapter is devoted to the *international criminal court* and contains a selection of instruments including the statutes of the two ad hoc international tribunals (the Yugoslavia-tribunal and the Arusha tribunal), the Rome Statute for an International Criminal Court and the Statute of the Special Court for Sierra Leone. The third chapter includes the most important codifications, mostly drafts that tend towards the elaboration of an *international criminal code.* Chapter 4 contains a selection of the most important *international crimes* as they emerge from international conventions, ranging from war crimes, crimes against humanity and terrorism to money laundering, organised crime, insider trading and child pornography. The fifth chapter deals with the various forms of *international co-operation in criminal matters* covering subjects such as extradition and the European arrest warrant, co-operation between investigation authorities, co-operation between judicial authorities, transfer of criminal proceedings, transfer

of execution of sentences, transfer of prisoners and mutual recognition, the cornerstone of co-operation in the European Union since the summit of Tampere (1999).

The collection is limited in time and space. In *time*, it is limited to the period after the Second World War. In *space*, the focus is on universal and European instruments. There are some exceptions to these rules. For example, excerpts from the Versailles Treaty (1919) have been included and important (non European) regional instruments have been added to the list. Another rule guiding the selection is that only conventions, and not draft conventions have been included. There are, again, exceptions to this rule. For example, the 1954, 1991 and 1996 versions of the International Law Commission's Draft Code of Offences against the Peace and Security of Mankind have been included because of their great doctrinal importance and the need for students and academics to have access to these documents. The criminal law provisions in the Draft Constitution of the European Union (2004) have also been included, despite the fact that the discussion on this thorny issue will probably go on for some time.

A rule guiding the selection of the texts that are contained in this book is that only conventions are included, not international instruments of a non-treaty nature. Again, there are many exceptions to this rule. For example, important recommendations of the Committee of Ministers of the Council of Europe have been included, as well as several joint actions adopted by the member states of the European Union. In the same vein, the FATF-recommendations on money laundering were included. Dealing with terrorism, it was impossible to ignore a number of crucial UN resolutions on the subject that were adopted in the aftermath of 11 September 2001. After the events in Kosovo (1999) and Iraq (2003), it seemed appropriate to include the 1974 UN resolution on aggression, which had been omitted in previous editions of this book.

An exception was made for the Corpus Juris 2000, which does not really belong in this book because it does not qualify as a (draft) international instrument. At this stage, it is no more than an ambitious doctrinal proposal formulated by a group of European academics to which I had the privilege to belong. Like the various versions of the International Law Commission's Draft Code of Offences against the Peace and Security of Mankind that were included in this book, this European Draft Code is an important doctrinal instrument for the purposes of academic teaching, which was the reason for including it as well.

It was, of course, impossible to include *all* international criminal law instruments within a book of this size. There are, quite obviously, many more international crimes than those listed in Chapter 4. For example, there are no entries for crimes against cultural property and theft of archaeological treasures. And, in respect of the items that were selected, not *all* instruments could be included, mainly for reasons of space. For example, I have only included the rules of procedure and evidence of the Yugoslavia-tribunal, not those of the Rwanda tribunal, as both sets of rules are substantially the same. For the same reason, several instruments have been reduced to their most important provisions. For example, only the 3rd and 4th Red Cross Conventions (1949) have been reproduced completely, not the 1st and the 2nd. To gain space, preambles have generally been omitted as well as final clauses of conventions, again with a number of exceptions.

This volume has grown considerably in comparison to previous editions. Whereas the first edition (1996) was just over 600 pages, the present volume has more than 1500 pages. This only shows the dramatic increase in international criminal law instruments. There are a number of clear "growth areas". For example, the section on International Criminal Courts, which was composed of only 60 pages in 1996, now includes 282 pages, 182 of which are devoted to the International Criminal Court established by the Rome Statute. The list of noteworthy international crimes has become much longer, from 10 crimes in 1996 to nearly twice as much in 2004, including new crimes such cybercrime and child pornography and a dramatic increase of entries for certain of the "old crimes". The obvious example is terrorism, for which there were hardly any general instruments in 1996 (only specific ones dealing

with such matters as hijacking and hostage taking), whereas there is a host of conventions on the subject today, in various regional contexts ranging from the United Nations over the European Union and the South Asian Association of Regional Co-operation to the OAU and the Commonwealth of Independent States. Another important reason for the growth of the present volume is that there is a new player in the field. The European Union, which in 1996 hardly manifested itself in the area of international criminal law, has now become one of the main "producers" of legal instruments in this legal discipline: whereas there were only 7 EU-entries in the first edition, there are over 40 entries in the present one and the list can only be expected to grow in the years to come.

I wish to thank the persons who helped me to realise this new edition. Guy Stessens, administrator at the General Secretariat of the Council of the European Union and lecturer at the Law Faculty of the University of Antwerp, helped me to update the European instruments in this book and made useful observations on the rest of the collection. Liesbeth Janssens, research assistant at the Law Faculty of the University of Antwerp, helped me to collect the materials and assisted with the general production of the book. Without them, this third edition would not have been possible. My special thanks go to John Dugard, professor of law at the University of Leiden and member of the International Law Commission. The idea of producing this collection arose from our work as law professors who became co-rapporteurs for the International Law Association's Subcommittee on Extradition and Human Rights, combining the perspectives of a common lawyer specialising in public international law with those of a civil lawyer specialising in criminal law. His comments and suggestions were extremely helpful.

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