

Book Review: Gerhard Werle, *Völkerstrafrecht (International Criminal Law)*, Mohr Siebeck Publisher 2003, 553 p., € 89

By Christina Möller*

For international criminal lawyers, the year 2003 was marked by the five year anniversary of the adoption of the Rome Statute for an International Criminal Court (ICC) and the ten year anniversary of the International Criminal Tribunal for the former Yugoslavia (ICTY). It follows from the legal and, not to a small extent, the political development of the past ten years that international criminal law has finally achieved the status of a legal science *sui generis* and is no longer dismissed as a theoretical playground for a small élite of intellectual idealists or human rights activists. Correspondingly, the market of legal literature on international criminal law has grown continuously. The past years have seen the publication of a variety of books on International Criminal Law. These may generally be classified into two main groups. One category contains books written in order to obtain the Ph.D. or professorial degree.¹ These purely academic works, by their very nature, deal in great detail with rather specific and limited issues of international criminal law. The other category comprises mainly essay collections. Those are available on varying issues related to the practice of either the ICTY, the International Criminal Tribunal for Rwanda (ICTR) or the ICC. Such volumes are usually compiled and authored mainly by practitioners of the ICTY, the ICTR and the ICC or by former par-

* Dr. iur., Attorney at law (Frankfurt am Main/The Hague), Legal Officer at the International Criminal Tribunal for the Former Yugoslavia. The views expressed in this book review are solely those of the author, they do not necessarily reflect the opinion of the International Criminal Tribunal for the Former Yugoslavia or the United Nations.

¹ See, e.g., MACHTELD BOOT, GENOCIDE, CRIMES AGAINST HUMANITY, WAR CRIMES: NULLUM CRIMEN SINE LEGE AND THE SUBJECT MATTER JURISDICTION OF THE INTERNATIONAL CRIMINAL COURT (2002); ANNE MARIE LA ROSA, JURISDICTION PÉNALES INTERNATIONALES – LA PROCÉDURE ET LA PREUVE (Presses Universitaires de France 2003); HÉCTOR OLÁSULO ALONSO, LA ACTIVACIÓN DE LA JURISDICCIÓN ABSTRACTA DE LA CORTE PENAL INTERNACIONAL: ESPECIAL REFERENCIA A LA FISCALÍA (2002); KAI AMBOS, DER ALLGEMEINE TEIL DES VÖLKERSTRAFRECHTS- ANSÄTZE EINER DOGMATISIERUNG (2002); JAN CHRISTOPH NEMITZ, STRAFZUMESSUNG IM VÖLKERSTRAFRECHT-EIN BEITRAG ZUR STRAFZWECKLEHRE UND ZUR STRAFZUMESSUNGSMETHODE UNTER BESONDERER BERÜCKSICHTIGUNG DES RÖMISCHEN STATUTS (2002); CHRISTINA MÖLLER, VÖLKERSTRAFRECHT UND INTERNATIONALER STRAFGERICHTSHOF-KRIMINOLOGISCHE, STRAFTHEORETISCHE UND RECHTSPOLITISCHE ASPEKTE, (2003).

ticipants of the preparatory conferences and the Rome Conference for the Establishment of the ICC.²

The year 2003 was thus also marked by a new trend on the book market for International Criminal Law. This trend appears to go towards the publication of International Criminal Law *textbooks* which, for the first time, try to collect and present the *status quo* of the body of International Criminal Law in a more *structured* and *theoretical* manner in one single volume. These new books aim at a broader audience than the above-mentioned “older” generation of essay collections or academic works. Indeed, quite a few of the older books appeared to be only digestible for the small groups of experts on international criminal law who either were already working at the International Tribunals or intimately involved in the establishment of the ICC as practitioners or academics. The new species of international criminal law textbooks however seems to be geared toward *university education* by providing a structured over-all introduction to this area of law. In the opinion of the reviewer, the most sophisticated examples of this trend appear to be the textbooks recently presented by the authors Antonio Cassese and Gerhard Werle.³ Antonio Cassese, a renowned Italian professor of International Law and former Judge of the ICTY, is already known to many lawyers who studied International Law. It is thus not unlikely that his textbook *International Criminal Law*⁴ may already have made its way on many bookshelves around the world, last but not least also because Cassese’s work was published in English, the *lingua franca* of International Law and International Criminal Law.

The author of the textbook *Völkerstrafrecht*, Gerhard Werle, is a German Professor of Criminal Law at Humboldt-University in Berlin and his treatise on International Criminal Law (and many of his earlier publications) is written in German. His textbook may thus, if only for the language aspect that restricts its audience to German readers, warrant yet a bit more of an introduction to the international audience

² See, e.g., *ESSAYS ON ICTY PROCEDURE AND EVIDENCE IN HONOUR OF GABRIELLE KIRK McDONALD* (Richard May et al. eds., The Hague 2001); *THE PROSECUTION OF INTERNATIONAL CRIMES* (Roger S. Clark & Madeleine Sann eds., 1996); *INTERNATIONAL CRIMES, PEACE AND HUMAN RIGHTS: THE ROLE OF THE INTERNATIONAL CRIMINAL COURT* (Dinah Shelton ed., 2000); *THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT* (Mauro Politi & Giuseppe Nesi eds., 2001); *THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT: A COMMENTARY, VOLUMES I AND II* (Antonio Cassese et al. eds., 2002); *VÖLKERRECHTLICHE VERBRECHEN VOR DEM JUGOSLAWIEN-TRIBUNAL, NATIONALEN GERICHTEN UND DEM INTERNATIONALEN STRAFGERICHTSHOF* (Horst Fischer & Sascha Rolf Lüder eds., 1999).

³ Other, though in the opinion of the reviewer less convincing, examples of this new species are the books ILIAS BANTEKAS ET AL., *INTERNATIONAL CRIMINAL LAW* (2001) and KRIANGSAK KITTICHAISAREE, *INTERNATIONAL CRIMINAL LAW* (2001).

⁴ ANTONIO CASSESE, *INTERNATIONAL CRIMINAL LAW* (Oxford University Press 2003).

which the author of this review is pleased to offer. In the past years, Werle has, *inter alia*, published on a great variety of legal issues related to issues of Transitional Justice (in the broadest sense). In particular, his analysis of efforts undertaken in South Africa (past-apartheid) and Germany (post-WW II and post-GDR) in order to come to terms with their infamous past regimes contributed greatly to the research undertaken in this field. He may thus be said to figure as one of the most innovative and internationally-minded members of the unfortunately still rather small and exclusive circle of *senior criminal law professors* in Germany who are prepared to look beyond national borders and to contribute actively to the internationalisation of Criminal Law.

The book comprises 449 pages of text plus an Annex of approximately 100 pages, containing, *inter alia*, excerpts of the Statutes of the Nuremberg International Military Tribunal (IMT), ICTY, ICTR and ICC, the new German Code of International Crimes and a list of relevant judgements and decisions. According to the cover text, Werle's book intends to offer the first *complete and comprehensive collection of international criminal law in German language*. As the author sets out in his foreword, he aims at providing an overall insight and guidance to practitioners working at International Criminal Tribunals and Courts as well as to scholars, students and lecturers in international criminal law and international humanitarian Law. The umbrella term "international criminal law" may, depending on its definition, comprise a variety of legal issues. Werle understands as *Völkerstrafrecht*, for the purpose of his book, the *substantive* international criminal law encompassing the so-called *core-crimes*, i.e. war crimes, crimes against humanity, genocide and aggression. He also includes an overview on the general principles of international criminal law.

The treatise does not deal with other international crimes (such as, for instance, international terrorism or drug trafficking). It also does not deal with questions of jurisdiction or immunities, extradition or international legal assistance, or any procedural aspects of international criminal law. It may thus be said that Werle's work focuses on international criminal law *proper*. In this particular area of international criminal law, Werle analyses both the codified law and the case law adjudicated by the IMT, the International Military Tribunal for the Far East (IMTFE), the ICTY and the ICTR. In addition, the author, being a *German* law professor, concludes each Chapter of his textbook with a reference to and explanation of the correlating provisions contained in the new German Code of International Crimes which entered into force one day prior to the ICC Statute, on 30 June 2002. This continuous reference to German (international criminal) law throughout the textbook contributes greatly to its aim of providing an overall overview on International Criminal Law to the reader, by demonstrating the close and indispensable interaction between the *international* and *national* prosecution of war crimes, crimes against humanity, genocide and aggression. The reader is not only informed about the substantive law

relevant for the international prosecution of core-crimes before International Tribunals and the ICC. He or she is also introduced to the relevant substantive law for the national prosecution of core-crimes before *German courts*, and thereby gains an understanding of the national dimensions of International Criminal Law. In light of the complementarity regime enshrined in the Rome Statute, and the limited *factual* possibilities of International Courts and Tribunals to cope with *all* perpetrators of mass-crimes, the *national dimensions* of International Criminal Law may, in the long run, prove much more important than realised yet. Werle also appears to anticipate this likely future development.

The volume consists of six chapters, each of which contains several sub-chapters. The first chapter deals with general features of international criminal law “in a nutshell”, including, *inter alia*, summary introductions to the historical development, the notion, sources, interpretation and legitimising fundamentals of international criminal law. The second chapter reviews the general principles of International Criminal Law. The third chapter is devoted to the crime of genocide and the fourth to crimes against humanity; the fifth deals with war crimes and the sixth chapter examines the definition of the crime of aggression. Each chapter is preceded by a list of selected national and international legal doctrine, referring the reader who wishes to explore a specific topic further to carefully selected additional sources and material.

Werle’s analysis of crimes against humanity, war crimes and aggression all begin with a cursory examination of the historical development of these crimes. He then turns to carve out the *status quo* of the legal definition of these crimes, referring to the provisions laid down in the Rome Statute. In order to interpret these provisions, Werle reviews the jurisprudence of the other International Tribunals, in particular, the ICTY and the ICTR case law, the Elements of Crimes of the ICC as well as other international instruments, such as, for instance, the Geneva Conventions. To a rather limited extent, he also recognises secondary literature. In sum, Werle’s examination of the threshold elements and those of the underlying crimes for all afore-mentioned crimes is – necessarily – short and rather compact but always quite complete and to the point. The author manages to condense the available jurisprudence and secondary literature into an easily digestible format, by trying to avoid burdening the reader with too many details. This general approach is convincing if one recalls the aim of this publication, namely, to give an overview on the matters discussed. It is also notable that Werle, despite or maybe just because of his very focussed style, does not fail to draw the attention of the reader to some of the most important legal problems existing today with regard to some crimes. For instance, he deals to some extent with the problematic inclusion of the so-called *policy element* in the Elements of Crime for the ICC Statute (in relation to crimes against humanity), and, in the opinion of the reviewer, correctly points out that the inclusion of

such an element in the definition of crimes against humanity clearly contradicts customary international law. Another brief example showing that the treatise also seeks to illuminate problematic areas are Werle's observations with regard to war crimes, for instance, the definition of the *active participation* of child soldiers. The book contains many more such examples documenting the author's intention to point out at least the most crucial theoretical legal problems and existing lacunae and shortcomings. As already mentioned, chapters one, three, four, five and six are all finally rounded off with a sub-chapter containing an examination as to how Germany has fulfilled its obligations as a member State of the ICC by integrating the principles and crimes contained in the Statute into German criminal law.

In toto, the book *Völkerstrafrecht* clearly fills a lacuna in the sector of International Criminal Law publications. It is the first textbook providing an up-to-date, thorough and compact overview of international criminal law in a structured and theoretical manner and in German. As such, it will certainly soon become the leading text for German and German-reading students and scholars of international law and criminal law who are interested in exploring the exciting area of international criminal law. It requires no particular prophetic powers to anticipate that Werle's work will have a crucial impact on the university education of German and German-speaking students in this area of law. While the author also explicitly addresses his book to the legal practitioners of international criminal law, i.e. Judges, Prosecutors and Legal Officers at International Courts and Tribunals, it will however cater to this audience only to a more limited extent. Due to its compact and rather cursory character, it may be of assistance to "newcomers" in this field who may feel more confident by having this book within reach. To the more experienced practitioners, however, the volume offers few new insights. It is thus anticipated that the book will have its greatest impact in the area of *university education*. In the interest of the broadest possible distribution of this important work of legal education, it is thus very much hoped that it soon will be made available in a paperback version so that students and young scholars can obtain this valuable volume for a more affordable "student" price.

Finally, the reviewer hopes that Werle will continue his efforts to provide German students, researchers and practitioners with up-to-date textbooks in the area of international criminal law. Another important, and, in the daily practice of international criminal law at International Tribunals and Courts indispensable, area where further soundly analysed textbooks in German are completely missing, is *international criminal procedure*. No doubt, to compress this ever-developing and ever-changing area of International Criminal Law into a readable textbook in German appears to be the ultimate challenge for an author. This is not only because of the wealth of procedural decisions handed down by the ICTY and ICTR on a daily basis and because of the fact that, contrary to this, the Rules of Procedure and Evi-

dence of the ICC, still await their "practice test". It is also because many instruments inherent to international criminal procedure of International Criminal Tribunals and Courts, such as, *inter alia*, "disclosure", "pre-trial and closing briefs", "interlocutory appeals" and many other procedural devices, are completely alien to German (civil law) students and lawyers as they stem from the common law system. Nevertheless, it appears to the reviewer that, if anybody, Werle would certainly be the person in Germany to embrace this challenge. It is thus also very much hoped that, in due time, he will pick up the gauntlet and contribute another important textbook on international criminal procedure to the German science of international criminal law.