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## Book Review: Treatise of International Criminal Law, Vol. i: Foundations and General Part, Oxford University Press, Oxford, 2013, written by Kai Ambos

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## Book Reviews



### Kai Ambos

*Treatise on International Criminal Law, Volume I: Foundations and General Part*,  
Oxford University Press, Oxford, 2013. ISBN: 978-0-19-965792-6, xlvii + 469 pages.

*Treatise on International Criminal Law. Volume 1: Foundations and General Part* is the first volume of Kai Ambos' encyclopaedic work on international criminal law (ICL). The book belongs to a comprehensive three-volume treatise on ICL authored by one of the most renowned and prolific experts in this field of law. As proclaimed by the author himself in the *Preface*, "the treatise pretends (*sic*) to fill a gap in the academic literature by offering a foundational, systematic, comprehensive, and consistent account of ICL ...". Undoubtedly, the treatise is a remarkable contribution to the growing literature devoted to consolidating the corpus of knowledge of ICL.

As suggested by the title, this first volume addresses the foundations and the general parts of ICL. It successfully systematises ICL in a comprehensive fashion. Chapter I offers the reader a broad historical overview over ICL, briefly covering relevant precedents of international criminal justice spanning from the conviction of Peter von Hagenbach in the xv century, to the creation of modern international and mixed tribunals. Chapter II relates to the concept, function and sources of ICL and discusses the purposes of international criminal justice from a philosophical viewpoint. The references to Hart's theory of law and morality and to the modern philosophers of *Rechtsgüter*<sup>1</sup> (e.g., Franz von Liszt, among others)<sup>2</sup> make Ambos' analysis complete and well-reasoned in all its aspects. Chapter III deals with the "bipartite structure of crime in ICL",<sup>3</sup> namely, the traditional distinction between *actus reus* and *mens rea*.

1 Literally "legal goods", the term indicates values the respect of which is necessary for living in a community of individuals, such as the protection of life, freedom and property.

2 Ambos, p. 62.

3 Ambos, p. 99.

Chapter IV examines the concept of individual criminal responsibility in light of relevant national and international case law. In this chapter, the author points out relevant jurisprudential contributions made by international, mixed and domestic courts to the notion of individual criminal responsibility and to the determination of different forms of participation in the crime. The effort to systematise and manage the complexity of ICL is particularly evident in this Chapter. Chapter V focuses on the omission liability in ICL (commission by omission), in particular in relation to command responsibility, whereas Chapter VI inquires into attempt liability in ICL. The concluding Chapters VII and VIII are devoted to the subjective requirements of international crimes and to the grounds excluding responsibility, respectively.

The tenor of the analysis varies throughout the volume. The first two chapters are rather introductory and provide a collection of must-know materials, adding little to the existing literature. A noticeably thorough analysis, however, is conducted on individual criminal responsibility in Chapter V, where the author examines the objective and subjective elements of responsibility by making reference to national and international case law. Particularly, the mention of national case law of Latin American countries<sup>4</sup> or of the jurisprudence of the Special Panels in East Timor<sup>5</sup> reveals the far-reaching research conducted by the author on cases scarcely commented on in Anglo-American literature. Similarly, Chapter VII, on the subjective requirements of international crimes, shall be signalled as a valuable contribution to the current academic debate, especially concerning Article 30 of the ICC Statute.

Ambos' work is deliberately ICC-centred in the sense that it assumes the ICC Statute as the point of reference of the entire study.<sup>6</sup> The author identifies that the adoption of the ICC Statute and the establishment of the Court marked the "institutionalization of ICL, turning the page on ad hoc imposition in favour of a treaty-based universal system".<sup>7</sup> Further, the ICC Statute "provides for the first codification of ICL with a potentially universal reach". When called for, the author will depart from the Statute in order to analyse ICL beyond the ICC. References to topical case law delivered by the *ad hoc* tribunals are functional to the interpretation of the ICC Statute. The impression is that the author tries to rely as much as possible on written sources of law to avoid any possible infringements of the principle *nullum crime sine lege scripta*. However, such an approach may appear biased by the civil law culture and inclined to discard

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4 Ambos, pp. 114–118.

5 Ambos, pp. 136–138.

6 Ambos, p. 56.

7 Ambos, p. 55.

typical features of the common law tradition and of public international law alike, for example, the great relevance of customs. In the same vein, the author pays particular attention to the German doctrinal contributions to ICL. Despite referring, *inter alia*, to English, French, Italian and Spanish literature, the references to German publicists are numerous and the treatise expressly draws upon the works produced by the author himself in his native language and not yet published in English. Coherently with the purpose of applying a broad comparative method, the author refers to leading case law of common and civil law jurisdictions and invokes in a number of occasions the terminology drawn from several domestic penal systems. Nevertheless, given the extensive reference to the German penal system, it appears clear to the reader that this is the context in which the author has developed and operated.

The structure of the work is clear and makes the volume handy for the purposes of study and research. For each matter, the author starts off with the relevant provisions of the ICC Statute, proceeds to the analysis of the relevant national case law and concludes with the relevant international jurisprudence. In the humble view of this reviewer, the limit of Ambos' treatise lays in its ICC-centric approach and in the predilection for written sources of law, which partly ignores the importance of customary international law for the determination of ICL. Likewise, the author does not take in due consideration the criticism raised by some scholars on the discrepancies between the law enshrined in the ICC Statute and customary international law, although he did refer to those commentators explicitly.<sup>8</sup> At the same time, the author distinguishes himself for his criticism and original perspectives with regard to issues already commented in literature, such as the applicability of private self-defence in ICL.<sup>9</sup>

Overall, this book constitutes a valuable scholarly support to examine ICL issues, to trace recent developments and to keep track of past ones. The book serves the purpose of answering a breath of diverse questions related to ICL. For instance, one asking "what is the current stand on the applicability of the insanity defence in ICL?" will definitely find an answer in Ambos' treatise. Indisputably, the volume under review has the virtue of dealing with a vast array of crucial ICL issues in a comprehensive, but concise manner. In addition, at least two further points of strength shall be mentioned. First, the smart use of figures inserted by the author to illustrate complex theoretical constructions whereby the reader may be assisted in the comprehension of complex issues such as the forms of participation envisioned in Article 25 of the ICC

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8 Ambos, p. 74.

9 Ambos, p. 336.

Statute.<sup>10</sup> Second, the choice of the author to publish the chapter bibliographies of the volume online shall be praised to good benefit of research and resource sharing. Thanks to this, the scrupulous (or simply curious) reader may consult a pool of doctrinal sources and rely on landmark case law (both national and international) selected and examined by the author.

Not only has Kai Ambos succeeded in the proposed objective of providing “a foundational, systematic, comprehensive, and consistent account of ICL”,<sup>11</sup> but he has also produced a high-quality piece of work, plenty of hints for further reflection. The book should definitely form part of the personal library of international legal scholars, researchers, and national and international practitioners in ICL alike. Particularly, the book may be extremely helpful for practitioners who are familiar with the German penal architecture and terminology and engage in the study of substantive ICL with a comparative outlook.

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10 Ambos, p. 149.

11 *Ibid.*