
Book Reviews

Ahlbrecht, Heiko. *Geschichte der völkerrechtlichen Strafgerichtsbarkeit im 20. Jahrhundert*. Baden-Baden:

Nomos, 1999; Pp. XXVI, 396, appendix 148,- DM, 1080,- öS, 131,50 sFr

The adoption of the Rome Statute for the establishment of the International Criminal Court (ICC) of July 1998 reflects a dramatic development in the international community's approach to the punishment of grave international crimes. With this Statute, the international community reached a consensus for the first time on accepting responsibility for the prosecution and punishment of persons guilty of such crimes. In order to understand the outcome of the Rome conference, it is essential to recall the faltering development of international (criminal) law in the 20th century against a background of political circumstances and historic events, essentially the two World Wars and innumerable armed conflicts, that triggered and furthered the demand for an effective instrument to counter the impunity of those responsible for crimes against international law.

While this important recent development has given rise to an abundant literature on various aspects of international criminal law, an analysis of the historical circumstances has been neglected. Heiko Ahlbrecht has filled this gap by providing a chronological account of the development of international criminal law leading up to the establishment of the ICC. The author does much more than examine the major precedents of international criminal jurisdiction, such as the Treaty of Versailles and the Leipzig war crime tribunals, the Nuremberg and Tokyo International Military Tribunals following the Second World War and the International Criminal Tribunals for Yugoslavia and Rwanda. Indeed, he draws an overall picture of the development of inter-

national criminal law in the 20th century against its historical background. Ahlbrecht looks at initiatives to punish war crimes that have been much less commonly appraised in the academic literature, including efforts in the wake of the war in Vietnam and the Iraq-Kuwait war, as well as several academic contributions to the topic, most importantly the drafts of the International Law Commission. The study concludes with an account of the present outcome of the arduous journey towards an international criminal jurisdiction, namely the ICC Statute.

The author's red line throughout this study is his focus on material law rather than the institutional framework and questions of procedure. Ahlbrecht analyses the attempts made to codify the three crimes that today fall under the jurisdiction of the ICC: genocide, crimes against humanity and war crimes. He examines the recognition of these crimes in international law, closely linking this analysis to the question of validity of the *nullum crimen, nulla poena sine lege* principle in its four derivations, *nulla poena sine lege scripta, sine lege stricta, praevia* and *certa*. This survey shows how political decision-making rather than the principle of legality has determined the history of criminal jurisdiction.

The author seeks to give a comprehensive account of the historical background and precedents as well as the range of academic discussion. Given this broad approach, the venture at times becomes a mere *tour d'horizon*. Chapter 5 on the Nuremberg and Tokyo Tribunals, for example, lacks an assessment of the actual cases and verdicts. The subsequent proceedings under the *Kontrollratsgesetz 10* are simply listed. Moreover, one might have hoped to find a clearer assessment of the cases before the ICTY in Chapter 9. On the other hand, Ahlbrecht's account of the period of the Cold War in Chapter 7 is very

informative, with the Vietnam war providing a clear example of the failure to bring war criminals to justice due to a lack of joint political will. This part of the book is interesting as it deals with one of the rather less commonly examined chapters of international criminal jurisdiction. It also shows Ahlbrecht's strength: his study might appear rather descriptive, but it is as such a valuable, well-documented compendium, which, at least in the German language, is the first of its kind.

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Staehelin, Alesch. *Das TRIPs-Abkommen: Immaterialgüterrechte im Licht der globalisierten Handelspolitik*. Bern: Stämpfli Verlag, 2nd ed. 1999. Pp. xiv, 335. Index. CHF 88; DM 88.

The Agreement on Trade-related Intellectual Property Rights (TRIPs), signed as an annex to the 1994 WTO Agreement, does not only constitute a significant development for intellectual property law, but also has important consequences for the notion and shaping of international trade law. Until recently, the international system for the protection of intellectual property rights led an independent existence untouched by the treaties and institutions of international trade law. The international intellectual property agreements were administered by the World Intellectual Property Organization (WIPO), while the GATT trading system barely, if at all, dealt with issues of intellectual property law. However, the steadily growing economic significance of intangible goods protected by intellectual property rights, as well as the increasing focus of the last GATT rounds on non-tariff barriers to free trade, have meant that the strict separation between intellectual property and international trade law can no longer be upheld. A low level of protection of intellectual property rights constitutes a barrier to free trade and makes exports of intangible goods to low-protection countries costly.

TRIPs is the outcome of a US initiative aiming at the integration of intellectual property law into the world trading system. It constitutes a broadly encompassing intellectual property code, which sets high protection standards. In contrast to the traditional WIPO-based system for the protection of intellectual property rights, TRIPs also obliges the member states to establish an effective enforcement system and includes a dispute-settlement procedure for complaints against states that do not respect their obligations under TRIPs.

The book under review covers a wide range of issues on the topic of TRIPs. It treats its general provisions and the different types of intellectual property rights as well as examining the enforcement and dispute settlement provisions. Furthermore, as indicated by the subtitle of the book — 'Intellectual property rights in the light of the globalized trade policy' — the author's intention is to shed light on the background to the TRIPs negotiations and on the link between intellectual property and international trade. The book also addresses the difficult question of the immediate applicability of TRIPs and discusses whether it is beneficial or detrimental for developing countries.

As the book covers such a broad range of topics, each of which would warrant in-depth discussion, the analysis of TRIPs remains quite thinly spread. Answers to controversial questions and issues still under debate are rarely given. For example, the copyright section of the book explains the relevant TRIPs provisions, but does not provide a thorough analysis of how those rules are to be construed and whether they constitute a concrete change from the traditional rules of the Berne Convention. Similarly, in his treatment of the TRIPs patent provisions, the author only briefly touches upon the much-discussed issue of patent protection for computer software, and does not go beyond a summary of the current state of the debate. Moreover, the TRIPs enforcement provisions receive only a brief description. The author does not go into the question of whether the 'Special 301' (not 'Super 301') procedure can be upheld — an

extremely important question, which, after all, has led to a WTO panel report.¹ Furthermore, many important policy issues concerning the integration of intellectual property into the world trading system remain undiscussed:² Has TRIPs altered the way we look at intellectual property rights? Should intangible goods, such as music and motion picture assets, be treated like other goods? Can the rules of international trade be applied to intellectual property without any need for adaptation?

In sum, readers wishing to explore very detailed and specific issues relating to TRIPs and its implications for the world trading

system will at times feel unsatisfied by this book. However, the book does provide accurate and abundant information on the history of TRIPs, on its principles and on the substantive provisions covering the different types of intellectual property rights. Anyone needing to learn about TRIPs would do well to read Staehelin's book as a valuable introduction to the subject.

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¹ Panel Report *United States — Sections 301–310 of the Trade Act of 1974*, WT/DS152/R, 22 December 1999.

² See M. Haedicke, *Urheberrecht und die Handelspolitik der Vereinigten Staaten* (1997), at 174 *et seq.*