Preface

Since the establishment of the ICTY, ICTR and ICC legal scholars have increasingly shown an interest in the field of international criminal justice. Much research has been done on both substantive international criminal law and the law of international criminal procedure. These two components of international criminal law have gradually developed into separate bodies of law. In the domestic context, however, criminal law is usually recognized as having not just a dual, but a tripartite structure, consisting of substantive law, procedural law and sanctioning law. Sanctioning law consists of such aspects as theories and objectives of punishment, penalties, sentencing, enforcement and release. This book analyses these issues from an international criminal justice perspective. It sets out the sanctioning law of the international criminal tribunals and courts, examines its boundaries and explores its core themes.

This Handbook recognizes the social reality that international criminal courts must deal with detainees and prisoners without the developed legal framework, specialist expertise or infrastructure present in domestic penal systems. Accordingly, the international criminal justice context poses unique challenges for international criminal courts. They must deal with a high-profile population of detained persons in a system entirely dependent on the voluntary cooperation of host States, enforcing States and international organizations. Given the proliferation of international courts and the increasing number of cases before them, international penal law, policy and practice are rapidly expanding. The difficulties involved in implementing this law often pose practical and political dilemmas for international criminal courts. Its implementation also has very real and often long-term consequences for international detainees, international prisoners and their families. Indeed, how international prisoners are treated can have an impact on transition in post-conflict States. Accordingly, this book critically analyses the penal methods used by the international penal system to respond to international crime. Looking beyond the rhetoric to the reality of international detention, punishment and imprisonment, the book highlights a range of contemporary challenges and areas where there is a clear need for improvement and makes recommendations for the development of the current system. The book also identifies areas of international penal law and practice that call for a sui generis approach.

Accordingly, this book adopts a broader approach than examining international sanctioning law; it examines the operation of the international penal system. For the purposes of this book, the term ‘international penal system’ is not a term of art with a specific sociological definition. Nor is it restricted to particular international criminal courts. Rather it is a term that incorporates all issues related to detention and imprisonment by international criminal courts. For example, it includes such issues as non-custodial sanctions, monitoring of conditions of detention, the protection of prisoners under international law and the transfer of prisoners. The different aspects of, and pertinent themes related to, the international penal system will be discussed in chronological order, linking up with the sequence of the international criminal justice
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process. The book then proceeds to address more normative questions relating to standards, before exploring contemporary and alternative mechanisms for punishing and overseeing punishment, and possible avenues for development. Each Part will begin with a brief introduction to the theme under discussion and the chapters contained therein.

The first theme that will be discussed is remand detention, with a focus on the internal legal position of persons detained at international courts and their provisional release (Part I). Next, we will consider the range of penalties that can be imposed on individuals by international criminal courts and their normative basis (Part II). This is followed by an outline of the sentencing law and practice of the international courts and an exploration of the judicial practice of cross-referencing in the various courts’ sentencing jurisprudence (Part III). Since international courts do not have their own prisons, they are dependent on States for the enforcement of their sentences. Part IV evaluates the international system for transferring prisoners to cooperating States in light of inter-State practice and the Rule 11bis system. International custodial sanctions are enforced in domestic prisons. The applicable legal regimes are governed primarily by the domestic law of the State of enforcement, but are also subject to supervision by the international courts. Part V explores the legal regimes and principles that govern the enforcement of international sentences of imprisonment with a focus on the penal objective of rehabilitation. The deprivation of liberty by international criminal courts must be governed by international human rights and penal standards. Part VI asks whether, and to what extent, international penal law aligns with contemporary human rights law, and examines the role and methods used by an international body that oversees the implementation of international sentences (CPT). This section also analyses a new system for the conditional release and monitoring of prisoners introduced by the Residual Special Court for Sierra Leone. It is not necessarily the case, however, that international punishment should be restricted to the deprivation of liberty. Part VII asks whether a more prominent role should be accorded to transitional and restorative justice perspectives and explores the role of victim redress in international criminal justice. The final substantive section looks to the future. Part VIII examines arguments for and against creating an international prison and explores issues related to the Rome Statute’s scheme for compensating acquitted persons.

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This Handbook would, of course, not have been possible without the individual contributors, who have dedicated much time and effort to writing the various chapters. Throughout the process, the editors have been impressed by, and grateful for, the contributors’ readiness to enter into a dialogue on many aspects related to this new field of law. Their openness, dedication and the high quality of their contributions have ensured that this work truly deserves to be called a research handbook.

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