

theory of responsibility in international criminal law.⁷

Part Three discusses the possible effect of the application of this doctrine on JCE II and JCE III as modes of commission responsibility and whether, in fact, there is any merit to retaining them as modes of liability. Jain compellingly argues for the abandonment of JCE III. However, she acknowledges that a modification of JCE II may be 'potentially justifiable', but only in the form of accessorial responsibility.⁸

Jain provides a meticulous review of international criminal law cases and painstakingly compares the two major representative principles of the common law and civil law systems. This alone would render this book a relevant piece of legal scholarship. Nonetheless, its real value is found in the delivery of the objective set by the book, that is, the provision of a conceivable theory of individual responsibility, which is attuned to the distinctive features of international crimes.

If a drawback exists in this book, it can be attributed to the focused approach adopted by Jain, which necessarily results in less attention being paid to some of the broader issues involved. Concentrating solely on the collective nature and glossing over the disparities between international crimes and how these may affect the liability of high-level participants in mass atrocity may prevent it from providing an exhaustive analysis of individual modes of responsibility. Further elaboration on the inherent assumption that principles of criminal responsibility developed in the domestic criminal law context are salient to international crimes is necessary to render Jain's study effective in practice. Overall, however, this book provides a thought-provoking read for any practitioner of international criminal law.

Charlotte Pier

BA (Hons) International Relations and Chinese, Leeds; LL.M, International Human Rights and Humanitarian Law, University of Essex
charlottepier@gmail.com
doi:10.1093/jicj/mqv046

Advance Access publication 14 August 2015

Morten Bergsmo and SONG Tianying (eds), *On the Proposed Crimes Against Humanity Convention* (Torkel Opsahl Academic EPublisher, 2014) xvii + 486 pp. (Hardback) ISBN 978-82-93081-96-8

At present, despite the undisputable existence of crimes against humanity under customary international law, no treaty or convention sets out a comprehensive normative framework that would both codify a definition of these crimes and impose on state parties concrete obligations in the prevention and repression of such crimes. Yet, thanks to the efforts of an eminent group of scholars and practitioners, the recent addition of this topic onto the International Law Commission's agenda allows for hope that a convention on crimes against humanity may join, sooner rather than later, the growing constellation of treaties dealing with international core crimes.

To be distinguished from a similar initiative published in 2011,¹ the essays assembled in this edited collection by Morten Bergsmo and SONG Tianying analyse the proposed convention's provisions, instead of providing comments on the convention as a whole. Most of the essays — if not all — put forward recommendations and suggestions for the improvement of the text of the convention. For instance, Rita Maxwell's sound chapter on the necessity for the proposed convention to explicit the notion of responsibility to protect as a legal obligation, conveniently provides suggested amendments to the preamble.²

This anthology establishes the imperative need for states to seriously envisage the adoption of a convention specifically aimed at preventing and repressing crimes against humanity. The sum of the chapters demonstrates that, whether reaching consensus on a single definition of what crimes against humanity are, or setting out effective prosecution mechanisms, a convention is needed to fill the gaps found

1 L.N. Sadat (ed.), *Forging a Convention for Crimes against Humanity* (Cambridge University Press, 2011).

2 R. Maxwell, 'The Responsibility to Protect and to Prosecute: Reflections on the Canadian Experience and Recommendations for the Proposed Crimes Against Humanity Convention', in M. Bergsmo and SONG Tianying (eds), *On the Proposed Crimes Against Humanity Convention* (Torkel Opsahl Academic EPublisher, 2014) 275, at 300.

7 *Ibid.*, at 147.

8 *Ibid.*, at 207.

in the existing instruments which deal with crimes against humanity — either as such or with only some of their underlying crimes — in comprehensively addressing the various situations that may amount to such crimes.

In particular, the third and fourth chapters, authored by Eleni Chaitidou and Darryl Robinson, respectively — addressing the chapeau elements,³ and the ‘policy’ requirement —⁴ highlight the numerous discrepancies and ambiguities found in the various definitions of crimes against humanity and convincingly advocate for a comprehensive definition which would delineate the boundaries of this category of crimes. With respect to effective prosecution of crimes against humanity, the seventh chapter, by Julie Pasch, persuasively argues that the adoption of the proposed convention would serve the purpose of codification of a state obligation under customary international law to punish such crimes.⁵ In the same vein, Ian Kennedy in Chapter 12 takes the view that crystallization into customary international law of the principle *aut dedere aut judicare* with respect to crimes against humanity would be favoured by the adoption of the proposed convention.⁶

In gathering insightful contributions from emerging practitioners and renowned authors with complementary backgrounds, this anthology provides an excellent tool for those interested in the developing law on crimes against humanity.

William St-Michel
Legal Assistant,

Defence team of Mr Bosco Ntaganda,
International Criminal Court

wsmichel@gmail.com
doi:10.1093/jicj/mqv047

Advance Access publication 28 August 2015

- 3 E. Chaitidou, ‘The ICC Case Law on the Contextual Elements of Crimes Against Humanity’, in Bergsmo and SONG, *ibid.*, 47.
- 4 D. Robinson, ‘The Draft Convention on Crimes Against Humanity: What to Do with the Definition?’ in Bergsmo and SONG, *ibid.*, 103.
- 5 J. Pasch, ‘State Obligation to Punish Core International Crimes and the Proposed Crimes Against Humanity Convention’, in Bergsmo and SONG, *ibid.*, 201.
- 6 I. Kennedy, ‘The Proposed Convention on Crimes Against Humanity and *Aut Dedere Aut Judicare*’, in Bergsmo and SONG, *ibid.*, 329.

Ana Isabel Pérez Cepeda (dir.), *El principio de Justicia Universal: Fundamentos y Límites [The Principle of Universal Justice: Foundations and Limits]* (Tirant lo Blanch, 2012) 674 pp. € 59 (Paperback) ISBN 978-84-9004-781-1

Ana Isabel Pérez Cepeda (dir.) and Demelsa Benito Sánchez (ed.), *El Principio de Justicia Universal. Una Propuesta de Lege Ferenda [The Principle of Universal Justice. A de Lege Ferenda Proposal]* (Ratio Legis Librería Jurídica, 2013) 126 pp. € 18 (Paperback) ISBN 978-84-940885-1-3

These publications by Ana Isabel Pérez Cepeda, Professor of Criminal Law at the University of Salamanca, address the study of universal justice,¹ its limitations and possible application by national courts, focusing on Spain.

The first book under review, edited by Pérez Cepeda, is a collective study from Spanish academics that analyses the different aspects of universal justice,² and its development in international criminal law, as well as a comprehensive study of the Spanish experience on this matter.³ Despite the different approaches regarding the application of universal justice, the contributions to this volume subscribe to the premise that there is a general obligation on states to punish those responsible for the perpetration of international crimes, regardless of their nationality or where these crimes took place, and without requiring an effective link between the state carrying out the prosecution and the crime.⁴

This publication has four parts and a conclusion summing up the main characteristics

- 1 For this review, the term *justicia universal* will be literally translated as universal justice because this is the term used by the authors, while acknowledging that the functional term mostly used in English is universal jurisdiction.
- 2 A.I. Pérez Cepeda, ‘Presentación’, in A.I. Pérez Cepeda (ed.), *El principio de Justicia Universal: Fundamentos y Límites* (Tirant lo Blanch, 2012) 13.
- 3 D.L. Morillas Fernández, ‘Aplicación práctica del principio de justicia universal: claves para entender la Ley Orgánica 1/2009 y su vigencia actual’, in Pérez Cepeda, *ibid.*, 591.
- 4 Pérez Cepeda, *supra* note 2, at 13.