International Journal for Court Administration

Vol. 6 No. 2, December 2014
ISSN 2156-7964
URL: http://www.iacajournal.org
Cite this as: URN:NBN:NL:UI:10-1-115633

Book Review: The Territorial Jurisdiction of the International Criminal Court, *Cambridge University Press, 2014*

By Markus Zimmer, *IJCA* Executive Editor

Abstract:

This article reviews *The Territorial Jurisdiction of the International Criminal Court* by Michail Vargias, published by Cambridge University Press in 2014.

Among the hallmarks of the 20th Century are the determinations of an emerging global community (i) to codify what has come to be known in various cloaks as international criminal law, and (ii) to institutionalize its enforcement across political boundaries. There has been considerable follow-through on both, a singular accomplishment given the enormous diversity and range of political goals pursued by the nation-states that comprise the global community. The latter, enforcement, has turned out the more difficult. The global community has managed to establish and operate special regional and international tribunals whose political status is not anchored in the traditional sovereignty of a nation-state. The trail this second determination has blazed, commencing with the special military tribunals convened in Nurnberg, Germany from 1945 to 1949 and culminating with the entry into force on 1 July 2002 of the Rome Statute of the International Criminal Court, is scarred with delay, twists, turns and compromise.

Collectively, those impediments reflect the difficulty of achieving consensus by the nation-states of the global community on a variety of complex issues and policy questions. One of the most complex is the extent to which these nation-states are collectively willing to authorize these special tribunals or courts either to share, intrude upon, or trump state sovereignty in their zeal to enforce international criminal law. Such sharing, intruding or trumping is a function of how the jurisdiction of these regional and international tribunals is defined; however it is defined gives rise to a host of international public policy concerns. In drafting the formal agreements or statutes that establish such special tribunals, the options range from granting them a combination of elements of universal jurisdiction, custodial jurisdiction, and territorial -- subjective vs. objective -- jurisdiction, among others, to full universal jurisdiction. Simultaneously, the drafters, representing individual nation-states, typically exercise considerable caution to ensure the preservation and supremacy of their own jurisdictional sovereignty.

The effort to create the International Criminal Court (ICC) was informed by the experience of crafting and operating the special tribunals for Yugoslavia, Rwanda and Sierra Leone, among others. However, because the geographic jurisdiction of the permanent ICC is global as opposed to that of its temporary and regionally focused forerunners, the process of building consensus on what its sovereign jurisdiction should entail, vis-à-vis that of the nation states participating in the Rome Conference, turned out to be an exercise in compromise, the result of which was to anchor the ICC's jurisdiction largely on territoriality. A primary consideration throughout that conference's deliberations was defining the ICC's jurisdiction in a manner that enabled the reasonable enforcement of international criminal law but would not undermine or seriously intrude upon the sovereignty of individual nation-states.

Michail Vargias, lecturer at The Hague University of Applied Sciences, wrote his Ph.D. dissertation on the topic of the ICC's jurisdiction. More recently, he converted it into a 300-page study, *The Territorial Jurisdiction of the International Criminal Court*, published by Cambridge University Press in 2014. Much of the study focuses on a fairly exhaustive analysis and interpretation of Article 12(2)(a) of the Rome Statute (Statute). By way of context, the Statute reflects the agreement of the states parties or signatories to establish and define the ICC. One-hundred and twenty two countries are states parties to the Rome Statute of the International Criminal Court.[1] The Statute comprises 13 separate parts.[2] Article 12, 'Preconditions to the exercise of jurisdiction,' is in Part II, 'Jurisdiction, admissibility and applicable law.'

The work presents a prodigiously researched analytical review of the how Article 12(2)(a) is to be interpreted and, more broadly, the ICC's territorial jurisdiction. It will be of interest and use to academics and researchers in law, political

science, international public policy and international human rights who specialize in the fields of international criminal law, its enforcement and the ICC's jurisdictional reach. It also is likely to be of interest to the unique community of judges, prosecutors and defense counsel who serve in the ICC and/or its temporary forerunners, such as the ICTY and ICTR, which are now focused on completing their work, constructively managing their legacies and preserving key records. Finally, it also is likely to be of interest to certain categories of policy-making officials employed in government diplomatic posts, such as nation-states' United Nations delegations, and NGOs and certain departments within and adjuncts of the U.N., whose work includes advocacy or monitoring of international criminal law jurisdiction and/or enforcement.

Vargias laments at various intervals in the text the inevitable compromises that efforts to reach international consensus among a very diverse assortment of nation-states in various stages of economic and political development and sophistication inevitably entail. The result, for purposes of a clear definition and mandate of ICC jurisdiction, falls short in his judgment and leaves unspecified a number of key jurisdictional issues that will require painstaking analysis and interpretation on the part of the ICC's prosecutor, judges and defense teams as they grapple with difficult cases that require negotiating new and unclear international legal terrain. A useful example he cites is the burgeoning incidence of cross-border internet-based crimes and cybercrimes and their potentially global reach for victims. Where jurisdiction to prosecute particular cases is determined to exist, the challenge for the court's judges is crafting judgments that balance the interests of enforcing international criminal law without intruding on the jurisdictional authority of the affected nation-states – judgments that have the potential to ignite international diplomatic firestorms. Vargias lays out useful and often interesting examples of such dilemmas with generous references to pertinent cases, treaties and other official regional and international agreements, commentaries and other materials for interested readers to pursue.

The quality and breadth of Vargias' legal analysis throughout is sophisticated, technical and highly analytical. He does not shrink from posing hypothetical policy questions that the Court is likely to confront in cases yet to be heard, drawing in some instances on trends in advanced nation-states where courts of final appeal endorse expanded jurisdiction based on such considerations. He examines, for example, the extent to which the Court's interpretation of its jurisdiction should be expanded to encompass deterrence objectives as a matter of public-interest policy in light of the horrendous nature of much of its criminal jurisdiction as set forth in Part II of the Statute. In doing so, he draws on arguments advanced by U.S. federal appeals courts to justifying expanded jurisdiction in antitrust cases in which foreign defendants are implicated.

Those in search of a primer on jurisdiction in enforcing international criminal law for undergraduate-level international law, public policy or political science courses probably should look elsewhere. Vargais' comprehensive work is better-suited for specialized graduate-level seminars or faculty colloquia in those disciplines. My primary criticism, admittedly minor, is the author's proclivity to include summaries of his arguments in the conclusion section of most chapters; it may strike some readers as repetitive and unnecessary.

[1] Of the 122, 34 are African states; 18 are Asia-Pacific states; another 18 are Central and Eastern European states; 27 are Latin American and Caribbean states; and 25 are Western European and other miscellaneous states. The United States is not a signatory.
[2] http://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf