

## BOOK REVIEW

Kai Ambos (ed.), *Rome Statute of the International Criminal Court: Article-by-Article Commentary*, Beck, Hart, and Nomos, 4th ed., 2022, 3,064 pp., ISBN 9781509944057, £475  
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‘Never have so many, owed so much, to so few.’<sup>1</sup> Borrowing Winston Churchill’s words, this is how Professor M. Cherif Bassiouni<sup>2</sup> expressed his gratitude at the 1998 Diplomatic Conference in Rome to those involved in the Herculean task of drafting the Statute of the International Criminal Court.<sup>3</sup> Creating a legal framework for a permanent international court to try mass atrocity crimes was no easy task, yet the drafters had several models from which to draw inspiration: the International Military Tribunal in Nuremberg; the International Military Tribunal for the Far East in Tokyo; the International Criminal Tribunal for the former Yugoslavia (ICTY); and the International Criminal Tribunal for Rwanda (ICTR). What caused negotiating the Rome Statute to be such a painstaking process was that, unlike the post-Second World War tribunals (which were imposed by victorious states) and the *ad hoc* tribunals (which were imposed by the United Nations Security Council), states were now being asked to relinquish part of their domestic jurisdiction (and sovereignty) to the International Criminal Court (ICC).<sup>4</sup>

While the statutory provisions of the ICTY and ICTR were handed down by the UN Security Council (UNSC) with the admonition that only accepted customary international law would be applied,<sup>5</sup> it was left to the judges to draft the rules of procedure and evidence. This allowed for a flexible approach to mixing and matching procedural modalities to be tinkered with for efficacy and efficiency as deemed necessary,<sup>6</sup> but it seemingly gave the judges legislative authority.<sup>7</sup> With the unlikelihood of the UNSC amending the statutory provisions, the judges could cleverly get around this inconvenience by amending and interpreting their own rules.<sup>8</sup> At the Extraordinary Chambers in the Courts of Cambodia (ECCC), judges were more limited in the

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<sup>1</sup>M. C. Bassiouni, ‘Preface’, in O. Triffterer (ed.), *Commentary on the Rome Statute of the International Criminal Court: Observers’ Notes, Article-by-Article* (1999), xix, at xxi.

<sup>2</sup>Professor Bassiouni was a Professor of Law and was the Chairman of the Drafting Committee of the United Nations Diplomatic Conference on the Establishment of an International Criminal Court.

<sup>3</sup>See Bassiouni, *supra* note 1, at xxi.

<sup>4</sup>See P. Kirsch, ‘Introduction’, in Triffterer, *supra* note 1, at xxiii–xxiv; M. H. Arsanjani, ‘The Rome Statute of the International Criminal Court’, (1999) 93 AJIL 22, at 24–5; P. Kirsch and J. T. Holmes, ‘The Rome Conference on an International Criminal Court: The Negotiating Process’, (1999) 93 AJIL 2, at 4.

<sup>5</sup>While the Statutes of the ICTY and ICTR do not stipulate the applicable law, the UN Secretary General noted that the ICTY should apply ‘rules of international humanitarian law that are beyond any doubt part of customary law’. Report of the Secretary General Pursuant to Paragraph 2 of Security Council Resolution 808, UN Doc. S/25704 (1993), at 9, para. 34.

<sup>6</sup>The judges, registry, prosecution, and defence could all propose rule amendments. See Practice Direction on Procedure for the Proposal, Consideration of and Publication of Amendments to the Rules of Procedure and Evidence of the International Tribunal, UN Doc. IT/143/Rev.2 (2002).

<sup>7</sup>See G. Sluiter, ‘Procedural Lawmaking at the International Criminal Tribunals’, in S. Darcy and J. Powderly (eds.), *Judicial Creativity at the International Criminal Tribunals* (2010), 315, at 315.

<sup>8</sup>See J. Powderly, *Judges and the Making of International Criminal Law* (2020), at 404–5.

creation of procedural issues as Article 33 (new)<sup>9</sup> of the Establishment Law had limitations precluding them from effectively exercising such legislative power.<sup>10</sup> While some legislation from the bench may have been necessary and tolerated for the *ad hoc* tribunals, if states were going to sign on to the Rome Statute, and thus collectively as states parties take on the role of a legislative body,<sup>11</sup> the Rules of Procedure and Evidence would need to be drafted as part of the package, with states parties having the sole authority to amend them,<sup>12</sup> subject to exceptions.<sup>13</sup>

Drafting a statute and accompanying Rules of Procedure and Evidence by committee<sup>14</sup> – especially when the drafters come from different legal traditions and may also be either unfamiliar with or suffer prejudice against other legal traditions – can be challenging, despite the best intentions.<sup>15</sup> The same terms can often be understood as covering different meanings in various legal traditions.<sup>16</sup> In describing what emerged after the ECCC Internal Rules were drafted by the judges, Judge Marcel Lemonde bemoaned, '[t]he dish was not exactly what we ordered'.<sup>17</sup> Of course, Judge Lemonde was one of the cooks in the kitchen, but *too many chefs in the kitchen spoil the broth*, especially when the cooks are trained in different cuisines, having neither the appetite nor desire to understand and appreciate the cuisines of their fellow cooks.<sup>18</sup>

Ultimately, what emerged from the Rome Conference was a highly comprehensive but complex, and in some instances, confusing text with a fair amount of constructive ambiguity. With no reports being produced to recount the work of the Conference, as was done for the Preparatory Committee,<sup>19</sup> and no official legislative history from which to divine the negotiators' intended purpose behind the statutory provisions, a commentary that would inform as much as it would guide was necessary. For this we are grateful to the late Otto Triffterer, Professor of

<sup>9</sup>See Law on the Establishment of the Extraordinary Chambers, with inclusion of amendments as promulgated on 27 October 2004 (NS/KRM/1004/006). Amended provisions in the Establishment Law are labeled as 'new'.

<sup>10</sup>M. G. Karnavas, 'Bringing Domestic Cambodian Cases into Compliance with International Standards', (2014) 1 *Cambodia Law and Policy Journal* 45, at 58.

<sup>11</sup>Unlike the UNSC handing down the ICTY/ICTR Statutes, the Assembly of States Parties is the legislative body of the ICC. See 1998 Rome Statute of the International Criminal Court, 2187 UNTS 153, Art. 112(2). See also Report of the Preparatory Committee on the Establishment of an International Criminal Court, Volume I, UN Doc. A/51/22, at 42–3, para. 186. See also P. Ambach, 'Article 12 (Assembly of States Parties)', in K. Ambos (ed.), *Rome Statute of the International Criminal Court: Article-by-Article Commentary* (2022), 2767, at 2769–70.

<sup>12</sup>B. Broomhall, 'Article 51 (Rules of Procedure and Evidence)', in Ambos, *ibid.*, 1586, at 1590. Bruce Broomhall tells us that even states with no intention of becoming parties to the Statute were given an opportunity to prevent what they might regard as overreaching procedures, while undecided states would decide whether to sign or ratify the Statute based on the proposed rules.

<sup>13</sup>Article 51(3) of the Rome Statute provides that the judges may draw up provisional rules in 'urgent cases' to be applied 'until adopted, amended or rejected' at the Assembly of State Parties' (ASP) 'next' session. On 10 February 2016, the Plenary of Judges adopted Provisional Rule 165 to expedite Article 70 cases (offences against the administration of justice) by having a single judge conduct trials and a three-judge panel for appeals. Despite the ASP's inability or unwillingness to take any action over the course of several sessions, the Appeals Chamber confirmed the decision to apply Provisional Rule 165. *Prosecutor v. Gicheru*, Judgment on the appeal of the Office of Public Counsel for the Defence against the decision of Pre-Trial Chamber A of 10 December 2020 entitled 'Decision on the Applicability of Provisional Rule 165 of the Rules of Procedure and Evidence', ICC-01/09-01/20 OA, A.Ch., 8 March 2021.

<sup>14</sup>See, e.g., M. C. Bassiouni, 'Negotiating the Treaty of Rome on the Establishment of an International Criminal Court', (1999) 32 *Cornell International Law Journal* 443.

<sup>15</sup>The debate around ICC Rule 140 could easily be characterized as a 'clash of cultures between the civil law and the common law', with delegations from France and the United States championing their respective legal traditions. P. Lewis, 'Trial Procedure', in R. S. Lee (ed.), *The International Criminal Court: Elements of Crimes and Rules of Procedure and Evidence* (2001), 539, at 550.

<sup>16</sup>See M. G. Karnavas, 'The Serendipitous Nature of the ICC Trial Proceedings Risks the ICC's Credibility', in M. Böse et al. (eds.), *Justice Without Borders* (2018), 202.

<sup>17</sup>P. Zsombor, 'The Khmer Rouge Tribunal – A Legacy Yet to be Written', *Cambodia Daily*, 5 December 2012, 17.

<sup>18</sup>M. G. Karnavas, 'Salvaging the Khmer Rouge Tribunal's Legacy', *Cambodia Daily*, 11 December 2012, available at [www.cambodiatribunal.org/sites/default/files/news/Cambodia%20Daily%2012-14-12.pdf](http://www.cambodiatribunal.org/sites/default/files/news/Cambodia%20Daily%2012-14-12.pdf).

<sup>19</sup>See Triffterer, *supra* note 1, at v.

International Criminal Law and Procedure at the University of Salzburg. In 1999, just 13 months after the adoption of the Rome Statute, Professor Triffterer published his seminal 'Commentary on the Rome Statute of the International Criminal Court: Observers' Notes, Article-by-Article Commentary' (the Commentary). From the outset, Professor Triffterer's Commentary (and updated editions) has been the busy practitioner's first *go-to* treatise when quickly searching for sound, practical, yet authoritative and scholarly analysis on discrete issues of law related to the interpretation and application of the statutory provisions of the Rome Statute.

Professor Triffterer's purpose behind his 1,295-page Commentary was to inform interested persons – primarily, those responsible for interpreting and applying the Rome Statute at the international or national level and states uncertain about signing it – about the drafting process and to provide an interpretive guide which takes into account its history and evolution.<sup>20</sup> In other words, while it was to be a work-in-progress and perhaps assist in the drafting of the elements of crimes, it was also meant to persuade wavering states to sign the Rome Statute in the hopes of reaching the '60th instrument of ratification, acceptance, approval or accession' required for entry into force.<sup>21</sup>

With no jurisprudence from the yet-to-be-operational Court, the first edition draws heavily from the *travaux préparatoires* and the experience of the negotiators at the Diplomatic Conference in Rome. Fifty-one contributors, representing 25 countries, many of whom participated in the negotiations in Rome, invite the reader into the conversations at the negotiating table, providing a comprehensive understanding of the multi-faceted ambitions of the Statute and multiple agendas behind it. When considering that there is no summary of the work of the Rome Conference, these accounts are invaluable to understanding how the drafters of the Rome Statute intended each provision to be interpreted and applied.

The first edition provides a comprehensive article-by-article analysis that tracks the structure of the Rome Statute. Each article follows the same user-friendly structure: the relevant statutory text, a table of contents, general remarks, and an analysis and interpretation of each element of the Statute, paragraph by paragraph. Heavily footnoted to the *travaux préparatoires* and academic works, each article provides rich source material from which to glean the intent of the negotiators. Published three years before the ICC came into operation (and even before any state signed the Statute), the Commentary provides succinct discussion of each article in a unified systematic structure, thus creating ease for the reader in finding the most crucial point when in need of interpretive guidance.<sup>22</sup>

Twenty-three years later, the fourth edition of the Commentary, edited by Kai Ambos, Professor at Göttingen University and Reserve Judge at the Kosovo Specialist Chambers, has expanded by nearly 2,000 pages, spanning a voluminous 3,064 pages. By contrast to the first edition, it is not aimed at persuading states to sign the Rome Statute or to be a 'mouthpiece of the ICC' but rather to 'critically engage ... in a constructive spirit, with its case law and its performance in general'.<sup>23</sup> As explained by Professor Ambos in his editor's note, the fourth edition of the Commentary serves different purposes than the first edition: to update the case law of the ICC; to account for the most important academic contributions and legislative developments; and to provide clarity and structure and presentation and greater consistency.<sup>24</sup>

Featured in the fourth edition are 79 contributors, 23 of whom contributed to the first edition.<sup>25</sup> While the first edition had an introduction by the Chair of the Drafting Committee, the fourth benefits from introductions by five of the Court's pillars: the ICC President, the President of the

<sup>20</sup>*Ibid.*

<sup>21</sup>See Rome Statute, Art. 126(1).

<sup>22</sup>See Triffterer, *supra* note 1, at vi.

<sup>23</sup>See Ambos, *supra* note 11, at vii.

<sup>24</sup>*Ibid.*

<sup>25</sup>*Ibid.* Those who did not contribute to the third and fourth editions had their names removed from the list of contributing authors, following an editorial rule by the publisher.

Assembly of State Parties, one of the Judges, the Prosecutor, and the President of the ICC Bar Association representing defence and victims' counsels. The involvement of these high-level actors conveys the high esteem in which this commentary is held.

Following the five introductions, of which only Judge Bertram Schmitt's is noteworthy in succinctly describing the key judicial developments at the ICC since the third edition of the Commentary,<sup>26</sup> is a list of general literature concerning core topics of international criminal law and procedure, after which is a list of official ICC documents as well as documents from other international(ized) criminal tribunals and courts. Illustrating the 17 years of jurisprudential developments since the first edition, the table of cases spans 85 pages, with a comprehensive index of terms to assist the reader in locating discrete topics discussed in the article-by-article analysis.

While the first edition provided preliminary remarks with topical or thematic overviews of Parts 1 (Establishment of the Court), 9 (International Cooperation and Judicial Assistance), and 13 (Final Clauses) of the Statute – the fourth removes preliminary remarks for Parts 1 and 13. Most likely, the Preliminary Remarks for Part 9 were retained in the fourth edition because international co-operation and judicial assistance was one area where consensus was most difficult to achieve and because it is a key issue in ICC proceedings going to their fairness and expediency.<sup>27</sup> New articles are also covered in the fourth edition to reflect legislative developments, namely, the activation of the Court's jurisdiction over the crime of aggression<sup>28</sup> and the addition of four new war crimes in Article 8.<sup>29</sup> However, the commentaries to these new articles are somewhat less informative since there is no ICC jurisprudence and reference is primarily made to jurisprudence of the International Court of Justice and academic works. While the fourth edition does not cover the Rules of Procedure and Evidence, amendments to the rules, for instance, Rules 135 *bis* to 134 *quater* (concerning presence of the accused at trial through video technology or excusal from presence at trial) are discussed in the corresponding Article in the Rome Statute.<sup>30</sup>

Remarkably, the fourth edition comes just six years after the third edition, reflecting the increase in the ICC case load and rapid jurisprudential development. Bemba was convicted of war crimes and crimes against humanity and was subsequently acquitted on appeal,<sup>31</sup> while in the ICC's first Article 70 case, he was convicted alongside Kilolo, Mangenda, Babala, and Arido.<sup>32</sup> Al-Mahdi was convicted following the ICC's first proceedings on the admission of guilt by the accused under Article 65.<sup>33</sup> Ntaganda<sup>34</sup> and Ongwen<sup>35</sup> were convicted of war crimes and crimes against humanity, while Gbagbo and Blé Goudé were acquitted following a successful No

<sup>26</sup>B. Schmitt, 'Introduction', in Ambos, *supra* note 11, at xv–xvii.

<sup>27</sup>C. Kreß and K. Prost, 'Part 9 (International Cooperation and Judicial Assistance): Preliminary Remarks', in Ambos, *ibid.*, at 2440.

<sup>28</sup>ICC Press Release, Assembly activates Court's jurisdiction over crime of aggression, 15 December 2017, available at [www.icc-cpi.int/pages/item.aspx?name=pr1350](http://www.icc-cpi.int/pages/item.aspx?name=pr1350).

<sup>29</sup>Concerning employing microbial, biological, or toxin weapons; employing weapons that injure by fragments undetectable by X-rays; employing laser weapons; and starvation of civilians. See Rome Statute, Art. 8(2)(b)(xxvii)–(xxix), Art. 8(2)(e)(xv)–(xix).

<sup>30</sup>*Ibid.*, Art. 63. W. Schabas and V. Caruana, 'Article 63 (Trial in the Presence of the Accused)', in Ambos, *supra* note 11, at 1855.

<sup>31</sup>*Prosecutor v. Jean-Pierre Bemba Gombo*, Judgment pursuant to Article 74 of the Statute, ICC-01/05-01/08-3343, T.Ch., 21 March 2016; *Prosecutor v. Jean-Pierre Bemba Gombo*, Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against Trial Chamber III's 'Judgment pursuant to Article 74 of the Statute', ICC-01/05-01/08-3636, A.Ch., 8 June 2018.

<sup>32</sup>*Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu, and Narcisse Arido*, Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber VII of 17 September 2018 entitled 'Decision Re-sentencing Mr Jean-Pierre Bemba Gombo, Mr Aimé Kilolo Musamba and Mr Jean-Jacques Mangenda Kabongo', ICC-01/05-01/13-2351, A.Ch., 27 November 2019.

<sup>33</sup>*Prosecutor v. Ahmad Al Faqi Al Mahdi*, Judgment and Sentence, ICC-01/12-01/15-171, T.Ch., 27 September 2016.

<sup>34</sup>*Prosecutor v. Bosco Ntaganda*, Judgment on the appeals of Mr Bosco Ntaganda and the Prosecutor against the decision of Trial Chamber VI of 8 July 2019 entitled 'Judgment', ICC-01/04-02/06-2666, A.Ch., 30 March 2021.

<sup>35</sup>*Prosecutor v. Dominic Ongwen*, Trial Judgment, ICC-02/04-01/15-1762, T.Ch., 4 February 2021.

Case to Answer motion.<sup>36</sup> Important procedural issues were addressed in these cases such as the introduction of prior recorded statements under Rule 68, witness preparation, as well as the submission/admission regimes concerning the introduction of evidence.<sup>37</sup> Reparations procedures were also underway in four cases,<sup>38</sup> charges were confirmed against three suspects,<sup>39</sup> three new investigations were authorized,<sup>40</sup> two suspects surrendered to the ICC,<sup>41</sup> and key decisions were made on the applicability of amnesties and pardons<sup>42</sup> and immunities of heads of state.<sup>43</sup> As Judge Schmitt explains in his introduction, these significant judicial developments ‘make . . . it more than clear that the Court is fully operational’.<sup>44</sup>

When comparing the third to the fourth edition, some articles contain only modest updates while reflecting more substantial jurisprudential developments. For example, in the fourth edition, Article 2 concerning the relationship of the Court with the UN effectively tracks the third edition but for a few additional sentences reflecting developments such as the adoption of the 2016 UN-ICC Best Practices Manual.<sup>45</sup> Article 41 concerning excusal and disqualification of a judge features two additional paragraphs in the fourth edition discussing developments in *Lubanga* (a request to disqualify Judge Silvia Fernández de Gurmendi from the sentence review proceedings) and *Bemba et al.* (a request to disqualify two of three judges on the Trial Chamber).<sup>46</sup> By contrast, Article 69 concerning evidence grew from 74 pages in the third edition to 96 pages

<sup>36</sup>*Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, Judgment in the appeal of the Prosecutor against Trial Chamber I’s decision on the no case to answer motions, ICC-02/11-01/15-1400, A.Ch., 31 March 2021.

<sup>37</sup>B. Schmitt, in Ambos, *supra* note 11, at xv–xvi.

<sup>38</sup>*Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the appeals against Trial Chamber II’s ‘Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable’, ICC-01/04-01/06-3466, A.Ch., 18 July 2019; *Prosecutor v. Germain Katanga*, Order for Reparations pursuant to Article 75 of the Statute, ICC-01/04-01/07-3728-tENG, T.Ch., 24 March 2017; *Prosecutor v. Ahmad Al Faqi Al Mahdi*, Judgment on the appeal of the victims against the ‘Reparations Order’, ICC-01/12-01/15-259, A.Ch., 8 March 2018; *Prosecutor v. Ntaganda*, Reparations Order, ICC-01/04-02/06-2659, T.Ch., 8 March 2021.

<sup>39</sup>*Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, Rectificatif à la Décision relative à la confirmation des charges portées contre Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud, ICC-01/12-01/18-461-Corr, P.T.Ch., 13 November 2019; *Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Corrected version of Public Redacted Version of ‘Decision on the confirmation of charges against Alfred Yekatom and Patrice-Edouard Ngaïssona’, ICC-01/14-01/18-403-Red-Corr, P.T.Ch., 14 May 2020.

<sup>40</sup>*Situation in the Republic of Burundi*, ‘Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Burundi’, ICC-01/17-X-9-US-Exp, 25 October 2017, ICC-01/17-9, P.T.Ch., 9 November 2017; *Situation in the Islamic Republic of Afghanistan*, Judgment on the appeal against the decision on the authorisation of an investigation into the situation in the Islamic Republic of Afghanistan, ICC-02/17-138, P.T.Ch., 5 March 2020; *Situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar*, Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar, ICC-01/19-27, P.T.Ch., 14 November 2019.

<sup>41</sup>*Prosecutor v. Paul Gicheru*, Order Setting the Date for the Initial Appearance of Mr Gicheru, ICC-01/09-01/20-34, P.T.Ch., 4 November 2020; *Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman (‘Ali Kushayb’)*, Decision on the convening of a hearing for the initial appearance of Mr Ali Kushayb, ICC-02/05-01/20-88, P.T.Ch., 11 June 2020.

<sup>42</sup>*Prosecutor v. Saif Al-Islam Gaddafi*, Judgment on the appeal of Mr Saif Al-Islam Gaddafi against the decision of Pre-Trial Chamber I entitled ‘Decision on the “Admissibility Challenge by Dr. Saif Al-Islam Gaddafi pursuant to Articles 17(1)(c), 19 and 20(3) of the Rome Statute”’ of 5 April 2019, ICC-01/11-01/11-695, A.Ch., 9 March 2020.

<sup>43</sup>*Prosecutor v. Omar Hassan Ahmad Al Bashir*, Decision on Jordan’s request for suspensive effect of its appeal against the decision on the non-compliance by Jordan with the request for the arrest and surrender of Mr Omar Al-Bashir, ICC-02/05-01/09-333, A.Ch., 6 April 2018.

<sup>44</sup>B. Schmitt, in Ambos, *supra* note 11, at xvi.

<sup>45</sup>P. Ambach, ‘Article 2 (Relationship of the Court with the United Nations)’, in Ambos, *supra* note 11, at 26–48. Compare with P. Ambach, ‘Article 2 (Relationship of the Court with the United Nations)’, in O. Triffterer and K. Ambos (eds.), *The Rome Statute of the International Criminal Court: A Commentary* (2016), 22.

<sup>46</sup>H. Abtahi and R. Young, ‘Article 41 (Excusing and Disqualification of Judges)’, in Ambos, *supra* note 11, at 1506–7. Compare with H. Abtahi and R. Young, ‘Article 41 (Excusing and Disqualification of Judges)’, in Triffterer and Ambos, *ibid.*, at 1258.

in the fourth, reflecting the Court's growing jurisprudence especially in light of challenges made to the admissibility of evidence at trial.

The fourth edition, much like the third, is heavily footnoted to the law and jurisprudence of the ICC as well as other international(ized) criminal courts and tribunals, reflecting a move away from the *travaux préparatoires* and academic opinions relied on in the first edition. Critics such as Simon M. Meisenberg view the shift away from the *travaux préparatoires* as justified given the Court's jurisprudential output since the first edition, but finds that the Commentary loses sight of the big picture by taking an article-by-article approach.<sup>47</sup> While I welcome the shift away from the *travaux préparatoires* and the focus on ICC case law, I disagree with his assessment of the Commentary's structure: from a practitioner's perspective, the article-by-article format is a much more useful tool allowing the reader to quickly home in on the relevant provision and sub-provisions to obtain an accurate and precise interpretation, rather than having to unscramble various principles elaborated upon in thematic overviews.

Others, such as Christoph Barthe, criticized the third edition for its lack of reference to domestic jurisprudence, considering that some states had been interpreting and applying principles expressed in the Rome Statute in domestic courts and that such jurisprudence can form part of customary international law.<sup>48</sup> He also laments that many of the articles are purely descriptive, lacking cross-analysis and application to real-life scenarios (such as contemporary crimes committed in Syria and Iraq).<sup>49</sup> While Barthe's criticisms and proposals seem appealing – especially with the plethora of cases being tried under universal jurisdiction in national courts of member states of the ICC<sup>50</sup> – in my view they are unsound, at least in so far as the Commentary remains in printed form, as opposed to an electronic format with more periodic updates as suggested below. Incorporating surveys of legal systems the world over to divine customary international law – or providing examples for cross-analysis and real-life application – would considerably expand the size of the Commentary and detract from its purpose: to explain the content of the Articles in the Rome Statute, including their drafting history, and their interpretation and application at the ICC (as opposed to national or other courts) through emerging case law in a user-friendly format.<sup>51</sup>

One downside of the Commentary is that it is not a commentary on the entirety of the Court's legal framework, including the Rules of Procedure and Evidence and Elements of Crimes. Several topics that are dealt with in Rules or Elements, such as issues concerning the disclosure process and detention matters, are left out.<sup>52</sup> Nonetheless, the third and fourth editions give considerably more attention to the Rules of Procedure and Evidence and the Elements of Crimes – a notable change from the second edition, which reproduced 200 pages of the core legal texts in an annex.

Just as the Triffterer Commentary became an authority widely recognized by international criminal law practitioners, academics, and external observers, the Ambos Commentary, having taken Professor Triffterer's vision to a higher and deeper level, can equally claim authoritativeness and erudition. The contributors deserve high praises. The fourth edition of the *Rome Statute of the International Criminal Court: Article-by-Article Commentary* is an essential tool both for international and domestic practitioners involved in international criminal law. It is highly reliable and exceptionally useful. With the growing number of situations and cases under the scrutiny of the

<sup>47</sup>S. Meisenberg, 'Otto Triffterer and Kai Ambos (eds.): The Rome Statute of the International Criminal Court: A Commentary', (2016) 16 *International Criminal Law Review* 561, at 562–3.

<sup>48</sup>C. Barthe, 'Otto Triffterer and Kai Ambos (eds.), The Rome Statute of the International Criminal Court', (2018) 16 *Journal of International Criminal Justice* 663, at 664–5.

<sup>49</sup>*Ibid.*, at 668.

<sup>50</sup>See H. Evans, 'A Survey of Recent Developments and Trends in Universal Jurisdiction', *Lawfare*, 9 February 2022, available at [www.lawfareblog.com/survey-recent-developments-and-trends-universal-jurisdiction](http://www.lawfareblog.com/survey-recent-developments-and-trends-universal-jurisdiction).

<sup>51</sup>See Ambos, *supra* note 11, at vii.

<sup>52</sup>B. Elberling, 'Commentary on the Rome Statute of the International Criminal Court – Observer's Notes, Article by Article', (2008) 51 *German Yearbook of International Law* 759, at 761.

ICC Office of the Prosecutor, and the relatively short time period in between the publication of the third and fourth editions, one wonders whether a new edition would be necessary in the next couple of years. As ICC President Piotr Hofmański aptly put it in his introduction to the fourth edition, ‘commentaries generally end exactly where real problems begin’<sup>53</sup>

Unfortunately, the Commentary comes at a costly £475 or roughly €560, as with all major commentaries – hence why an electronic version should be considered for the next edition, rather than publishing another hefty manuscript (or multi-volume publication), with a subscription option to receive periodic updates to reflect evolving jurisprudence. Professor Mark Klamberg’s short and digestible commentary, for example, is available online for anyone to download with hyperlinks to the source material for easy cross referencing.<sup>54</sup> Consideration should also be given to having an electronic annex of domestic cases. Recent developments in domestic tribunals, such as the January 2022 conviction of the former colonel Anwar Raslan in Germany for war crimes committed in Syria,<sup>55</sup> could indeed enrich the analysis for the growing number of states exercising universal jurisdiction. Considering the impact of this Commentary on the development of international criminal law, the large volume of jurisprudence that predictably will reach the desks of the commentators, and the potential to reach a wider global audience, due consideration should be given to publishing an electronic version of the next edition of *Rome Statute of the International Criminal Court: Article-by-Article Commentary*.

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<sup>53</sup>P. Hofmański, ‘Introduction’, in Ambos, *supra* note 11, at xiii.

<sup>54</sup>See, e.g., M. Klamberg (ed.), *Commentary on the Law of the International Criminal Court* (2017), available at [www.legal-tools.org/doc/aa0e2b/pdf](http://www.legal-tools.org/doc/aa0e2b/pdf).

<sup>55</sup>For a summary of the proceedings see Syria Justice and Accountability Center, ‘Inside the Raslan Trial #58: The Raslan Verdict in Detail’, 13 January 2022, available at <https://syriaaccountability.org/inside-the-raslan-trial-the-raslan-verdict-in-detail/>.

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