

Unraveling the Essence of Crime in International Criminal Law: A Review of Iryna Marchuk's Work

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Abstract

This review encapsulates the essence of Iryna Marchuk's seminal work, "The Fundamental Concept of Crime in International Criminal Law," published by Springer and spanning 311 pages, with ISBN 978-3-642-28245-4. Hailing from Copenhagen, Denmark, Marchuk's book navigates the intricate terrain of international criminal law with precision and scholarly insight. Marchuk's examination centers on unraveling the foundational notion of crime within the expansive realm of international law. Through a meticulous exploration of legal precedents, theoretical frameworks, and contemporary challenges, she illuminates the multifaceted dimensions of criminality in a global context. The book embarks on a journey through the evolution of international criminal law, tracing its origins and milestones while dissecting the complexities inherent in defining and prosecuting crimes of international concern. Marchuk's analysis delves into the intersection of legal principles and moral imperatives, probing the intricate balance between state sovereignty and universal human rights. Furthermore, Marchuk scrutinizes the



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jurisprudence of international tribunals and courts, dissecting landmark cases and seminal judgments to discern overarching trends and emerging jurisprudential principles. Through this lens, she evaluates the efficacy of existing legal frameworks in addressing grave crimes such as genocide, war crimes, and crimes against humanity. Marchuk's work also confronts the challenges of enforcement and accountability in the international arena, interrogating the mechanisms for ensuring compliance and prosecuting perpetrators across borders. By interrogating the evolving nature of transnational crimes and the shifting dynamics of global governance, she offers valuable insights into the imperative for international cooperation and collaboration in the pursuit of justice.

KEYWORDS *International Criminal Law, Justice, Concept of Crime, Iryna Marchuk, International Criminal Court*

Introduction

In the intricate tapestry of international criminal law, the concept of crime serves as a foundational pillar upon which the edifice of justice is constructed. Within this expansive domain, Iryna Marchuk's seminal work, *"The Fundamental Concept of Crime in International Criminal Law,"* emerges as a beacon illuminating the complexities and nuances inherent in defining, prosecuting, and adjudicating transnational offenses.¹

In this review, I embark on a journey of intellectual exploration, delving into the depths of Marchuk's scholarship to unravel the essence of crime in the context of international legal norms and practices. From her base in Copenhagen, Denmark, Marchuk navigates through the intricate labyrinth of comparative criminal law, deftly weaving together threads of domestic jurisprudence and international legal principles.

¹ Marchuk, Iryna. *The fundamental concept of crime in international criminal law: a comparative law analysis*. Springer Science & Business Media, 2013. Also see Mantovani, Ferrando. "The general principles of international criminal law: the viewpoint of a national criminal lawyer." *Journal of International Criminal Justice* 1.1 (2003): 26-38.

At the heart of Marchuk's inquiry lies the principle of complementarity, a linchpin of the Rome Statute, which empowers national jurisdictions to prosecute international crimes when the International Criminal Court defers to their competence. Through a meticulous analysis of this principle and its application by States Parties, Marchuk elucidates how comparative law enriches the tapestry of international justice, fostering the harmonization of legal standards across borders.

As I embark on this intellectual odyssey, guided by Marchuk's erudition and insight, we uncover the interconnectedness between national legal systems and the broader landscape of international criminal law. We confront fundamental questions of sovereignty, accountability, and the imperative for cooperation in combating impunity and upholding the rule of law on a global scale.

In the pages that follow, we delve into the depths of Marchuk's scholarship, traversing through the corridors of jurisprudence and scholarly discourse to glean a deeper understanding of the fundamental concept of crime in international criminal law. Through her rigorous analysis and lucid exposition, Marchuk invites us to interrogate prevailing assumptions, challenge entrenched paradigms, and envision a future where justice knows no boundaries.²

² See also some cases related to international criminal law and crimes, Marchuk, Iryna. "Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v Russia)." *Melbourne Journal of International Law* 18.2 (2017): 436-459; Badar, Mohamed Elewa, and Iryna Marchuk. "A comparative study of the principles governing criminal responsibility in the major legal systems of the world (England, United States, Germany, France, Denmark, Russia, China, and Islamic legal tradition)." *Criminal Law Forum*. Vol. 24. No. 1. Dordrecht: Springer Netherlands, 2013; Marchuk, Iryna. "Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of all Forms of Racial Discrimination (Ukraine v. Russian Federation) (Preliminary Objections) (ICJ)." *International Legal Materials* 59.3 (2020): 339-416; Marchuk, Iryna. "From warfare to 'lawfare': increased litigation and rise of parallel proceedings in international courts: A case study of Ukraine's and Georgia's action against the Russian Federation." *The Future of International Courts*. Routledge, 2019. 217-234.

Understanding the Crime Concept in International Criminal Law: An Iryna Marchuk's Opinion

The Fundamental Concept of Crime in International Criminal Law explores the intersection of comparative criminal law and international law, emphasizing the role of "general principles of law" from domestic criminal codes.³ Marchuk demonstrates how the principle of complementarity, as outlined in the Rome Statute, empowers States Parties to align their legal frameworks with international standards. As Bassiouni aptly notes, this cross-fertilization between national and international criminal law facilitates the harmonization of substantive and procedural legal principles on both domestic and global scales.⁴

This book meticulously explores the role of comparative law in shaping the substantive aspects of international criminal law. Through a thorough examination, it reveals that the integration of general principles drawn from diverse legal systems is paramount in establishing international criminal law on a foundation of universally accepted norms, rather than individual state prerogatives or deviations.

Comprising seven chapters, the book unfolds as follows. Chapter 1 delves into the Introduction, setting the stage for the subsequent exploration. Chapters 2 and 3 examine the Concept of Crime in Common Law and Continental Law Jurisdictions, respectively, offering comparative insights into the conceptual frameworks underpinning criminality in different legal traditions.

Chapter 4 delves into the Concept of Crime in International Criminal Law, shedding light on the convergence and divergence between domestic and international legal standards. Chapter 5 explores the Evolution of the Mens Rea Doctrine in International Criminal Law, tracing the development of culpable mental states in the context of international offenses.

³ See Akehurst, Michael. "Equity and general principles of law." *International & Comparative Law Quarterly* 25.4 (1976): 801-825.

⁴ See Bassiouni, M. Cherif, ed. *International criminal law, Volume 1: Sources, subjects and contents*. Vol. 1. Brill, 2008.

Chapter 6 scrutinizes the Modalities of Criminal Liability in the Jurisprudence of International Criminal Courts and Tribunals, examining the various forms of legal responsibility recognized in international law. Finally, Chapter 7 investigates the Grounds Excluding Criminal Responsibility in International Criminal Law, probing the principles and exceptions that govern individual accountability in cases of alleged criminal conduct.

Through meticulous analysis and scholarly inquiry, the book provides valuable insights into the foundation and development of this critical area of legal discourse.

Each chapter offers a nuanced exploration of its respective topic, contributing to a comprehensive understanding of the intricate interplay between comparative legal traditions and the evolving landscape of international criminal law. Through meticulous analysis and scholarly inquiry, the book provides valuable insights into the foundation and development of this critical area of legal discourse. From Main Chapter- In this book, there are further sub-chapters related to the details and details of the discussion of the basic chapter.

In my opinion, this book is a unique and different book from International Criminal Law Books in general, in which this book focuses mostly on discussing the practice and jurisprudence of the International Crime Court for the Yugoslavian Files (hereinafter referred to as the ICTY), the International Criminal Court for Rwanda (hereinafter the ICTR) and the International Criminal Court (hereinafter ICC). In several passages, reference is made to the jurisprudence of the Special Court for Sierra Leone (hereinafter SCSL).

The strength of this book is that, in Chapter 2, it provides explanations from various legal perspectives in various countries. For example, this book explains the comparison between the Concept of Crime in English Criminal Law between American Criminal Law.

That an act is deemed to have violated the law (Concept of Crime) and can be subject to criminal sanctions, two elements must be fulfilled, namely the existence of an *actus reus* element (physical element) and an

element of *mens rea* (mental element).⁵ The element of *actus reus* is the essence of the crime itself or the act committed, while the element of *mens rea* is the inner attitude of the perpetrator at the time of committing the act.

In several countries, a person's inner actions and attitudes are united and become a condition for a criminal act. Many scholars argue that the element of *actus reus*, namely actions must take precedence.⁶ After it is known that there has been a criminal act according to the formulation of the law, then it is investigated about the inner attitude of the perpetrator or elements of *mens rea*. Thus, the elements of a criminal act must take precedence, then if it is proven then it will consider the guilt of the accused which is an element of criminal responsibility.

In Chapter 3, The Concept of Crime in Continental Law Jurisdictions, a comparison between several countries is explained, including German, French, Russian, and Danish. The dependence of continental law jurisdictions on statutes as the main source of law has formed a substantive part of criminal law in more theoretical and conceptual terms than in common law jurisdictions. In fact, the two legal systems examined in this book (Germany and Denmark) share the same tripartite crime structure. Apart from lawlessness and wrongdoing, Russian criminal law recognizes the social harm of a crime and punishment as an indispensable legal element of a crime.⁷

⁵ See also Joshua, Edo Bintang, and Ade Adhari. "Analisis Ketiadaan Niat (Mens Rea) dalam Pidanaan Pada Putusan Pengadilan Negeri Jakarta Pusat Nomor 844/PID. B/2019/PN. JKT. PST." *Jurnal Hukum Adigama* 4.2 (2021): 3930-3952. See also and compare with Van der Vyver, Johan D. "The International Criminal Court and the Concept of Mens Rea in International Criminal Law." *University of Miami International and Comparative Law Review* 12.1 (2004): 57; Knoops, Geert-Jan Alexander. "Mens Rea at the International Criminal Court." *Mens Rea at the International Criminal Court*. Brill Nijhoff, 2016.

⁶ See Alexander, Larry, and Kimberly D. Kessler. "Mens Rea and Inchoate Crimes." *Journal of Criminal Law and Criminology* 87.4 (1997): 1138; Sayre, Francis Bowes. "Mens rea." *Harvard Law Review* 45.6 (1932): 974-1026.

⁷ See also Marchuk, Iryna, and Iryna Marchuk. "The Concept of Crime in Continental Law Jurisdictions." *The Fundamental Concept of Crime in International Criminal Law: A Comparative Law Analysis* (2014): 39-67.

Furthermore, in Chapter 4, it is explained about The Concept of Crime in International Criminal Law, in which the discussion is Criminal Law based on the Rome Statute 1998 and the Structure of International Crimes.

In Article 5 of the Rome Statute⁸, discussing Crimes Included in the Jurisdiction of the Court. The Court has jurisdiction pursuant to the Statute in respect of the following crimes: (a) The crime of genocide; (b) Crimes against humanity; (c) War crimes; (d) Crime of aggression.

So that the Criminal Jurisdiction of the International Criminal Court (ICC) consists of four types of crimes or criminal acts stated in Article 5 of the 1998 Rome Statute, namely genocide, crimes against humanity, war crimes and crimes of aggression. Each of these crimes (except the crime of aggression) is detailed in Article 6 of the 1998 Rome Statute (genocide), Article 7 (crimes against humanity), Article 8 (war crimes). Furthermore, in Article 9 it is emphasized that it is necessary to formulate in more detail the elements of each of these crimes in order to assist the International Criminal Court (ICC) in interpreting and applying the provisions in Articles 6, 7 and 8 Rome Statute 1998.⁹

In Chapter 5, Evolution of the *Mens Rea* Doctrine in International Criminal Law, discusses the legal analysis of *mens rea* in international criminal law to reveal the complexity of this fragmented jurisdiction. Although courts have made a significant contribution to the legal basis on *mens rea* by interpreting the required *mens rea* with respect to the contextual elements and offenses underlying core international crimes, jurisprudence is still rife with ambiguity and inconsistency.¹⁰ The judges of the international criminal court, who are very concerned with the rule

⁸ See Ambos, Kai. "General Principles of Criminal Law in the Rome Statute." *Criminal Law Forum*. Vol. 10. No. 1. Springer Science+ Business Media BV, Formerly Kluwer Academic Publishers BV, 1999. See also Williams, Sharon A. "The Rome Statute on the International Criminal Court: From 1947-2000 and beyond." *Osgoode Hall Law Journal* 38 (2000): 297-330.

⁹ See Cassese, Antonio. "On the current trends towards criminal prosecution and punishment of breaches of international humanitarian law." *European Journal of International Law* 9.1 (1998): 2-17.

¹⁰ See also Lawless, Michael. "Terrorism: An international crime." *International Journal* 63.1 (2008): 139-159.

of adjacency, focus heavily on the technical comparison of domestic criminal law concepts and inadvertently change a certain degree of confusion in international criminal law.

In Chapter 6, Modalities of Criminal Liability in the Jurisprudence of International Criminal Courts and Tribunals. In short, it discusses the primary focus of international criminal courts has been to identify the appropriate forms of criminal accountability that accurately reflect the guilt of high-ranking offenders of international crimes. The implementation of Joint Criminal Enterprise (JCE) as a principal mechanism of liability in the ad hoc tribunals was met with great enthusiasm, as it enabled the Prosecution to effectively address the complexity and collective nature of international crimes. However, the unclear and somewhat controversial expression of actus reus and men's rea in various forms of JCE in legal decisions has undermined the foundations of the doctrine. It has frequently been criticized for assigning the same level of culpability regardless of a participant's position or involvement in a crime. Despite the disadvantages of the JCE, the ad hoc and hybrid principles tribunals, which are concerned with adhering to customary law, continue to utilize the concept, while attempts to introduce alternative modes of commission liability into the legal system have been unsuccessful.

In Chapter 7 which discusses Grounds Excluding Criminal Responsibility in International Criminal Law, it has a quite unique discussion. Where in this chapter, it is explained about Introductory Words: Justifications v Excuses, including:

1. Insanity, Automatism and Burden of Proof
2. Voluntary and Involuntary Intoxication
3. Duress and Necessity
4. Self-Defense
5. Mistakes of Facts
6. Mistakes of Law
7. Superior Orders

From a series of excerpts from the discussion of the book "The Fundamental Concept of Crime in International Criminal Law" by Dr. Iryna Marchuk above, I highly recommend this book for readers who focus on International Criminal Law to read and understand this book, because

this book has unique and different discussions from International Criminal Law books in general. This book is packaged in a straightforward and easy-to-understand subject. The arrangement of the location and structure of the sequence of discussion of the material in this book is also very easy to understand.

Conclusion

In conclusion, the book offers a comprehensive examination of the intricate relationship between comparative law and the substantive principles of international criminal justice. Through the meticulous analysis conducted by Iryna Marchuk, readers gain profound insights into the foundational concepts that underpin the global pursuit of accountability for egregious offenses.

Marchuk's work underscores the importance of synthesizing general principles from diverse legal systems to establish a robust framework of international criminal law rooted in universally accepted standards. By navigating through the nuances of different legal traditions and exploring their convergence within the realm of international justice, Marchuk elucidates the imperative for harmonization and cooperation among states.

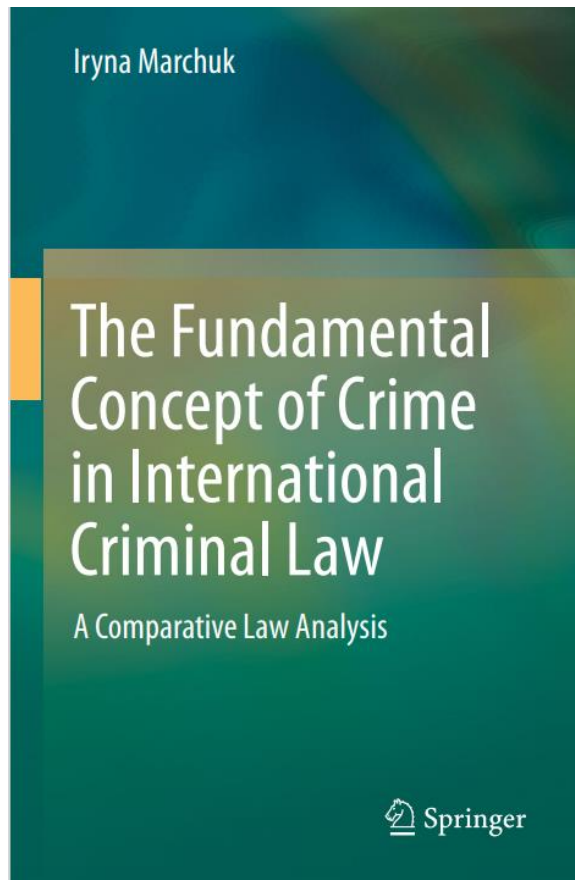
Furthermore, the delineation of seven chapters provides a structured and comprehensive overview of key aspects pertaining to the concept of crime in international criminal law. From examining the evolution of *mens rea* doctrine to scrutinizing modalities of criminal liability and grounds for excluding criminal responsibility, Marchuk's analysis offers valuable insights that contribute to a deeper understanding of this multifaceted field.

Ultimately, this review serves as a seminal resource for scholars, practitioners, and policymakers alike. It not only enriches our comprehension of the complexities inherent in prosecuting transnational crimes but also underscores the collective endeavor to uphold the fundamental principles of justice and accountability on a global scale. As such, Marchuk's work stands as a testament to the ongoing pursuit of a more just and equitable world order through the vehicle of international law.

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