Preface and Acknowledgements

‘Ubi iudicia deficiunt incipit bellum’, Grotius said. Where the methods of justice cease, war begins. If justice is the highest virtue, than defence rights are of the greatest importance not only on a national scale, but also on an international scale. The growing internationalisation and Europeanisation of criminal procedures create new and additional challenges to traditional defence rights, struggling in this era of recession and populism.

Hence, the Ghent Bar Association, as part of its bicentennial celebration, the Bar Association of The Hague, hosting the International Tribunal for the Former Yugoslavia and the International Criminal Court (ICC), and Ghent University, conducting lead research on international and European criminal policy, have joined their forces by exploring and addressing these challenges during an international conference, entitled ‘Defence Rights: International and European Developments’, held in Ghent on 23 November 2012, of which the current volume is the conference book.

This book, as the conference, has a double focus: defence rights before the ICC respectively EU defence rights.

Whereas international criminal tribunals, especially the ICC, should play an exemplary role when it comes to the right to fair trial and adequate access to a lawyer, reality proves to be troublesome. This book addresses key issues in this respect: what is the status questionis of the defence position and procedural rights before international criminal tribunals, more specifically the ICC? Has the Rome statute lived up to its expectations after a decade of its application? Can defence before international tribunals keep functioning without a Bar Association? What are the needs for such a defence to be adequate, knowing that it balances on the borderline between the Anglo-Saxon legal system and ours? What lessons can be learnt from this? What about victims’ rights, unexplored territory for international criminal law?

At the same time, defence and procedural rights are developing as a result of different EU Directives which have been or are now being negotiated. This is of major importance to every penalist, even in strictly national cases. This book informs about and critically assesses the entire EU ‘Roadmap for strengthening procedural rights of suspected of accused persons in criminal proceedings’. The EU Directive on the right to interpretation and translation in criminal proceedings and the anticipated proposal on special safeguards in criminal procedures for suspected or accused persons who are vulnerable (especially children, the mentally ill and the mentally disabled) pass in review. Also the EU-Directives on the right to information in criminal procedure and on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest (Salduz-Directive), which are about to revolutionize traditional domestic criminal procedural law, are thoroughly assessed. Further, the book addresses the impor-
tant implications and challenges for the legal position of detainees as a result of the recent Framework Decision on the mutual recognition of custodial sentences and measures involving deprivation of liberty. Finally, awareness is raised with respect to the future challenges of procedural rights in the framework of cross-border evidence gathering and admissibility.

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