

Carsten Stahn, A Critical Introduction to International Criminal Law, Cambridge University Press, 2019, xviii + 448 pp, pb £24.99

Preparing a textbook on International Criminal Law is a significant undertaking. This is especially true when the subject has reached a stage of relative maturity as an academic discipline, while the practical and political context in which it operates is constantly evolving. The mushrooming of international criminal courts and tribunals in the 1990s and 2000s has been followed by a period of taking stock in the second decade of the twenty-first century. This has coincided with pessimism that the ‘fight against impunity’ is being lost and the ‘age of accountability’ may be over. However, Stahn suggests that any such sentiment is a symptom of ‘overreach’ in the application or attempted application of international criminal law rather than ‘underreach’ (p. 1). Indeed, the book is testament to the potentially vast reach of these institutional developments and the discipline that studies them. Not only does the book look back at the panoply of accomplishments in terms of holding to account those who commit crimes that shock the international conscience, it also aligns itself with the current moment of reappraisal. This is a time of managing expectations and viewing international criminal law as just one piece in a larger puzzle of justice for all those affected by international crimes, meaning all members of the international community, whether States, corporations, groups or individuals, and even – with increasing focus on the environment – the Earth itself.

A Critical Introduction to International Criminal Law comprises an introduction, five main chapters that are broken down into multiple sections, and a sixth chapter that serves as a conclusion. In Stahn’s own words, ‘[t]he content is organized along five main themes that go to the heart of contemporary dilemmas of international criminal justice: the search for a definition of international crimes, the tension between individual and collective responsibility, the role and challenges of justice institutions, the organization of justice procedures, and approaches towards punishment and the repair of harm’ (p. 6: also pp. xiv, 14.) Thus, Chapter 1, prefaced by an exploration of the theory of international crimes, tackles the substantive aspects of what are known as the ‘core’ crimes, namely genocide, crimes against humanity, war crimes and aggression. The chapter goes beyond these categories, however, and looks back in history at piracy, terrorism and slavery, and into the future at what are described as ‘sidelined’ crimes (p. 105) such as those related to finance, the environment and famine.

Chapter 2 is concerned with individual and collective responsibility, the all-important modes of liability according to which perpetrators may be held to account. The tension underlying the analysis is summed up at the end of the chapter: ‘Attribution of individual criminal responsibility and the collective nature of crimes remain in constant friction’ (p. 145). Stahn addresses the responsibility of those in leadership positions in a brief paragraph, concluding that ‘[i]nternational criminal law may have become too obsessed with leadership accountability. The role of bystanders, companies and other drivers of conflict has been largely ignored in international practice’ (p. 132). Irrespective of the selection of candidates for prosecution in practice, the available modes of liability cover all levels, including aiders and abettors who may be high or low-ranking bystanders or companies. The notion of corporate complicity is not given as much attention as it arguably deserves, and there is no direct challenge to the position that companies are not generally held criminally liable for complicity in core crimes at the international level (pp. 121-123). Stahn contends that ‘[i]ndividualization of wrongdoing has many limitations’ (p. 124) but does not examine arguments favouring corporate criminality, organizational guilt or State criminal responsibility. He seemingly prefers mechanisms such as truth commissions and reparations to inventing – or reinventing – methods of holding collectivities to account under criminal law. Superior responsibility is embedded within the section on ‘other forms of liability’ yet seems deserving of separate treatment. Stahn observes that ‘[o]ne of the most inherent challenges of international criminal law is to spread responsibility more equally’ (p. 132), but the source of inequality is to be found in practical failures of application rather than in legal remedies themselves.

Chapter 3 examines the ‘global institutional architecture’, in other words the network of courts and tribunals that dispense international criminal justice. The institutions are as varied as the buildings housing them. It is consequently challenging to provide a coherent account of these institutions and the chapter has mixed success in identifying common and distinguishing features. For example, although it is stated that the role of international courts and tribunals goes far beyond punishment and involves certain ‘civil’ functions, such as providing reparations, the extent to which this is true varies from institution to institution. It is even harder to generalise across four justice models: domestic, international, hybrid and regional. Some of the hybrid and internationalised models are treated separately, with the apt conclusion that ‘each institution is to some extent an experiment of its own’ (p. 209). The chapter includes a valuable assessment of the strengths and weaknesses of domestic proceedings, in light of the recognised shift in focus towards prosecution of international crimes before domestic courts.

Coverage extends to in-depth discussion of human rights fact-finding commissions that ‘occupy a new space in the global justice landscape’ (p. 215).

Chapter 4 focuses on international criminal procedure, evidentiary rules and the role of different participants in international criminal justice processes. It may have been wise to flag at the outset that each institution is governed by its own rules of evidence and procedure. This might have forestalled any confusion arising from passages such as those referring to ‘the rules’ relating to *amicus curiae* representations (p. 324) without identifying the relevant court. The chapter’s opening announces that ‘[t]he turn to procedures is a rather recent phenomenon’ (p. 269.) Presumably this means that the idea of international procedural standards is relatively new. Presumably, also, to say that ‘procedural issues have remained in the shadow of international criminal justice’ (p. 269) implies that they were once considered of secondary importance to the substantive law but that this has changed or is changing. There remains force in Richard Goldstone’s view (quoted at pp. 274-275) that the success of international criminal courts should be measured by the fairness of the trials and not the number of convictions. Digging deeper, Stahn suggests that justice in the international criminal law context is broader than a fair procedure, broader even than a legal process. Returning to rules of evidence, there is an excellent discussion of digital and audio evidence, mobile telephone communications, and new methods and technologies such as remote sensing, satellite imagery and cyber-investigations, as well as the use of open source information and the challenges of establishing authenticity and reliability.

Chapter 5 addresses punishment and reparations. Stahn observes that the actual length of prison sentences is less important than the ‘broader social significance of the trial’ (p. 386). This clarification of objectives could be practically significant, for example where the accused has died during the proceedings. It is noted that more than 130 perpetrators have been convicted by international criminal courts and tribunals over the past three decades (p. 381). While this is presented as a significant figure, it does give pause for the reflections offered in Chapter 6 in view of the magnitude of the international criminal justice project and its relatively limited reach. The final chapter is titled ‘Rethinking International Criminal Law’, clearly advertising the author’s view that the subject has moved beyond its first thinking phase and is ripe for reassessment if not revalidation.

Two important points made by the author in earlier chapters are worth mentioning in the context of a general ‘rethinking’. First, international criminal law is ‘in some respects more

“progressive” than classical human rights law’ (p. 113) as it is not concerned only with state violence but also includes non-state armed groups within its reach, though the scope of criminal responsibility of non-state actors is ‘partly new territory’ (p. 114). Second, as a partial antidote to legacies of ‘imperial justice’, international criminal law is at least ‘to some extent a success of the power of small states in international law’ (p. 170). It is well-known that several big, powerful States have not signed up to the International Criminal Court (ICC). The book avoids making the ICC and its jurisprudence a central focus, suggesting that the future of international criminal justice is not seen to lie exclusively or even primarily in the hands of the ICC. Stahn comments that the ‘ICC articulation of complementarity is not necessarily adjusted to the complexities of conflict and post-conflict settings’ (p. 227). It is almost ironic to suggest that the ICC moves too fast, but this may be so if it fails to allow countries emerging from conflict to set their own timetable and processes for justice. An interesting paradox is presented, in that the ICC may intervene too quickly and in effect ‘take over’ the transitional justice process prematurely, but once it does intervene its processes for investigation and prosecution are often too slow to permit an effective contribution towards a sustainable, durable peace. Stahn’s rethinking involves ‘invest[ing] in more prevention rather than repression’ (p. 417: also pp. 175-176), although discussion of modalities is beyond the scope of this book. As Stahn notes, Hersch Lauterpacht viewed the Genocide Convention 1948 more as a ‘registration of protest’ against past atrocities than as an effective instrument to repress and punish such crimes (p. 34). The ICTY and ICTR gave force to the punitive aspect of the Convention but the repressive aspect still lags behind.

It is questionable whether the book’s title adequately defines its content. The narrative ranges more broadly over international criminal justice rather than focussing on the law per se. Indeed, it might be argued that it is only by placing all the wide-ranging themes of the book under the narrow idea of ‘international criminal law’ that the risk of ‘overreach’ of the discipline arises. The book goes beyond the classic definition of international criminal law as a body of rules defining certain conduct as criminal under international law, setting out the framework for holding perpetrators criminally liable, and describing the rules of procedure and evidence applicable to the adjudication of international crimes in specially constituted fora. As Stahn himself confesses, it is easier to state what the book is *not* – an examination of transitional justice – than to define precisely its scope and primary intended readership (p. xiv). It is perhaps best characterised as an exploration of the justice dimensions of international criminal law.

The text engages very thoroughly with what is by now a well-established body of law, principles and procedures governing the definition of international crimes and the mechanisms for promoting and achieving accountability. This is accomplished with an eye to recent developments and helpful hints of ‘watch this space’ in certain paragraphs. The book also aims to establish links with other disciplines, such as political science, criminology, anthropology and history (p. xiv). While there is no identifiable or consistent methodology in this respect, the insights drawn from other disciplines are apparent to a greater or lesser extent throughout the chapters and add depth of analysis particularly to the sections developing critical themes. Notwithstanding inevitable limitations of space, Stahn writes with authority informed by extensive research in previous scholarship, and at least touches on all key developments in the field. The result is perhaps more in the style of a scholarly treatise than an introductory textbook. Whilst its level of detail and sophistication in critical analysis are to be applauded, the book tends to assume basic knowledge and understanding of the field of study which may elude the beginner but would serve as a treasure trove for advanced students. Similarly, practitioners will find a scholarly account of key topics within both substantive and procedural law and teachers of international criminal law and related subjects will find a sound basis for instruction.

More in the style of a textbook, Stahn avoids expressing his own views on the topics, preferring to allow the reader to draw conclusions from the material provided (p. xiv). This is not done entirely consistently, with the result that it is sometimes difficult to hear the true voice of the author. For example, no independent conclusions are reached on the knowledge-based approach to determining genocidal intent (p. 44) or the wider question of cultural genocide (p. 47). But on crimes against the environment, Stahn expresses scepticism that international criminal law will play a significant role due to its anthropocentric nature (p. 110) and he has equally firm views against the extension of joint enterprise liability to specific-intent crimes (p. 134). On the technique of thematic prosecutions, tried out experimentally at the ICC, Stahn remarks that ‘[t]his trend should remain an exception rather than the rule’ (p. 351). But this refers to an article by Kai Ambos, and the extent of Stahn’s own endorsement is not entirely clear. His sometimes-staccato expression will not appeal to all readers and produces occasional obscurities.

The text betrays a curious and almost endearing tendency to personify international criminal law. International criminal law has been through a ‘heroic phase’ (pp. 98, 165) but needs ‘to justify itself on a continuing basis in different relations and emerges in and through

those relations' (p. 429). Eschewing ideas of state criminality or the responsibility of legal persons, 'it has placed the individual at the centre of its own normative universe' (p. 412). International criminal law must show greater modesty about its achievements (pp. 412-413) and above all, learning from Icarus, 'it should neither fly too close to the sun, nor too low to the sea' (p. 413). Of course, the underlying message is that 'it is essential to recognise the modest role of criminal law' (p. 417). International criminal law is only as good as its promoters, detractors and adherents, and its rules, principles and institutions which must earn legitimacy. Stahn's book provides a balanced portrayal of the practical application of international criminal law in today's world and gives hope that a new 'heroic phase' reflecting a wider conception of justice is not only a mythic ideal but a realistic expectation.

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