Book Review

Phillipe Sands, ed., *From Nuremberg to The Hague: The Future of International Criminal Justice*. Cambridge University Press, 2003. 206 pages, hardback, £40, ISBN: 0521829917.

By Neil McDonald[*]

International law tends to be[1] a topic of general conversation, raised and duly dismissed, before deciding how *really* to put the world to rights. Whilst the general profile of international law was undeniably heightened during the debate over war on Iraq, this was predominantly in the context of its institutions flapping helplessly, its rules bending to the point of irrelevance, as events overtook them. The situation is naturally troubling, and illustrates not only a credibility gap but also probably a gap in *accessibility* to international law. The International Court of Justice, for example, is virtually invisible outside of international law circles and is not taken seriously in many quarters. This is partly due to a lack of glamour in case subject matter. It is also perhaps an inevitable consequence of a court that is perceived to fudge the issue so spectacularly when the stakes are high.[2] However, the invisibility of international courts is surely also attributable to the absence of interest amongst the general public and non-international lawyers on the back of a perceived lack of relevance to all but a highly-educated coterie of (predominantly young) international lawyers, and the absence of any efforts to rectify the situation. The International Criminal Tribunal for the former Yugoslavia has benefited from high-profile case subject matter, without creating a large measure of excitement outwith legal circles (bar *Milosevic*). If awareness of international law could be raised, well-publicised failures to one side, perhaps its institutions would stand a better chance of success.

The International Criminal Court ("ICC") has the opportunity, from the outset, to generate high-profile cases and a real interest within both expert and non-expert

[*] LL.M., Harvard Law School, 2003; LL.M., European University Institute, 2002; LL.B.(Hons), University of Glasgow, 2000.

[1] Or risks becoming so, depending on one's disposition.

[2] Obvious contemporary examples include the *Nuclear Weapons Advisory Opinion* and the *Arrest Warrant* case.

https://doi.org/10.1017/S2071832200016679 Published online by Cambridge University Press

circles. Naturally, a raft of publications has accompanied the advent of the ICC. Prominent amongst these are new or revised treatises on international criminal law, a must for the student of international criminal law.[3] The depth of these texts could be intimidating to the newcomer to the area of public international law. For a private international lawyer (or, god forbid, a non-lawyer) they could be positively off-putting. For this reason, *From Nuremberg to The Hague* is notable not only for its content, but also for the crucial function it can serve within legal education. As part of a concerted effort[4], books of this kind can help set the ICC apart from existing legal institutions in terms of accessibility and visibility.

The result of a series of five lectures organised jointly by the Matrix Chambers and the Weiner Library, and sponsored by *The Guardian* newspaper, between April and June 2002, *From Nuremberg to The Hague* fills an accessibility gap with regard to the ICC. In terms of content, the book covers an impressive array of issues in a concise fashion. Richard Overy traces the historical origins of international criminal law leading up to the Rome Statute ("From Nuremberg to The Hague", in fact). Andrew Clapham and Philippe Sands both tackle the technicalities of the ICC regime, Clapham examining general issues in their historical context and Sands highlighting specific domestic prosecutions such as *Pinochet*. James Crawford recalls the lengthy drafting of the Rome Statute, fleshing out the backdrop of legal and political compromise encased in the instrument, and giving the reader some idea of the mammoth individual efforts involved (not least those of Crawford himself). Finally, Cherie Booth closes the book by flagging key substantive areas to be addressed before the ICC, notably the prosecution of "gender crimes" so successfully established at the Rwanda and Yugoslavia tribunals. All contributors to *From Nuremberg to The Hague* admirably avoid high "legalese". Crawford perhaps drifts closest to traditional legal essay writing (fairly substantial cross-referencing for instance) but can probably be forgiven in the light of the manifold elements and constrained page limit of the tale he tells.

Stressing the purpose that this book can serve is by no means to imply that it is some sort of experiment in "international law-as-Bauhaus" functionalism. The content is engaging, informative and generally cohesive. Substantively, the book covers no new ground as such, but this is not to say that *From Nuremberg to The Hague* should be ignored by international lawyers, as it provides a concise yet thoughtful summary of issues facing international criminal law. For example,

---

[3] See e.g. Cherif Bassiouni, *Introduction to International Criminal Law* (Transnational, 2002); Antonio Cassese, *International Criminal Law* (Oxford University Press, 2003).

[4] For a similar type of publication, *see* Geoffrey Robertson, *Crimes Against Humanity: The Struggle for Global Justice* (New Press, 2000).

many existing publications on international criminal law feature a stock introductory section on the contribution of Nuremberg, but few tie the present to the past in any meaningful way, a feat accomplished in the first section of the book. Overy, for example, provides a timely reminder of the pivotal role played by the United States at the Nuremberg trials, and indeed the restraint shown by the US in the face of British demands for summary execution[5], deliberately bringing contemporary US practice into sharp relief for the reader. Additionally, Sands describes well the tension between state sovereignty and international criminal law, juxtaposing the *Pinochet* and *Arrest Warrant* cases. His candour is especially refreshing regarding both the interests of the Congo in the latter case, and the wider considerations that the ICJ must make in deciding such cases.[6]

Any omissions in *From Nuremberg to the Hague* are understandable given its remit. For instance, Booth is given primary responsibility for addressing the "future" aspects of the ICC. She rightly points out the importance of gender equality on the bench of, and prosecution of gender crimes before, the ICC. Redressing the gender balance and bringing perpetrators of mass rape to justice have been high on the agendas of both the Yugoslavia and Rwanda tribunals over the last decade, and this should continue. In looking to the future, though, representation has other crucial aspects. Booth acknowledges the inevitability of the ICC Prosecutor having to make strategic choices over which cases to pursue.[7] However, she fails to note that since the ICC presents the novel possibility of internationally centralised justice, a representative cross-section of offenders' nationalities is also surely crucial to the legitimacy of the court in the eyes of the global community of states. Indeed, this is perhaps an overarching lesson of the Yugoslavia and Rwanda tribunals; that piecemeal and state-specific justice is unsatisfactory. The omissions do not, however, detract from the overall theme of *From Nuremberg to The Hague*. Indeed, totally comprehensive and definitive coverage would change the tenor of the book.

---

[5] Richard Overy, 'The Nuremberg Trials: International Law in the Making', in *From Nuremberg to The Hague*, at 4.

[6] Philippe Sands, 'After Pinochet: the Role of National Courts', in *From Nuremberg to The Hague*, at 97-103. The *Pinochet* judgment before the UK House of Lords held *inter alia* that a former Chilean head of state could not claim immunity from jurisdiction in an extradition proceeding. The court found that the crime charged, namely torture, did not allow a claim of head of state immunity under international law, and further noted that some crimes are so serious as to permit exercise of jurisdiction by any state. The *Arrest Warrant* case was a successful application by the Congo to the ICJ, requiring that Belgium annul an arrest warrant, served *in absentia* under its 'universal jurisdiction' law, accusing the then serving Foreign Minister of the Congo of grave breaches of the laws of war.

[7] Cherie Booth, 'Prospects and Issues for the International Criminal Court: lessons from Yugoslavia and Rwanda', in *From Nuremberg to The Hague*, at 182.

Finally, it is refreshing to see a text on international criminal law that is not overly preoccupied with the difficulties caused by the U.S. stance towards the ICC.[8] The more writings that labour US opposition as some sort of still-birth for the ICC, the greater the possibility of the ICC's failure becomes. U.S. opposition has already raised general interest in a negative sense. There is definitely also a possibility to develop widespread positive interest. For sure, the ICC system working effectively and being seen to work effectively will ultimately determine its success. Texts like *From Nuremberg to the Hague* have a place in the grand scheme of things, however, and that place should not be ignored.

From Nuremberg to The Hague is strongly recommended as an excellent introductory text in international criminal law, as an accompaniment to the heavier, more technical offerings already available. The book is also evidence of a heretofore absent approach to engage non- specialists that legal publicists should be striving for at what is an important time for international criminal law.

[8] Although Booth does imply that the ICC will not be truly "international" without the participation of the U.S.

https://doi.org/10.1017/S2071832200016679 Published online by Cambridge University Press