
As Héctor Olásolo recognises in this study, the defining distinction between international criminal law and domestic criminal law lies in the “macro” level of the former. This difference in scope subverts many of the assumptions underlying domestic criminal law in prominent legal systems, none more so than the idea that the closer an actor is to the *actus reus* of an offence, the greater their culpability. The most high-profile international criminal law cases involve prominent military or political leaders accused of offences not committed personally, but through the actions of their subordinates or followers. Such trials impose evidential strains on a prosecution which must often deal not simply with a broad factual basis of an indictment but also with the more difficult task of connecting military and political leaders to the actual commission of crimes (or, as Olásolo bluntly asserts, the key question is ‘what did the defendant have to do with the crimes charged in the indictment?’ (2)). In these cases, where defendants are ‘geographically remote’ from the crime scene and have ‘no contact whatsoever’ with the physical perpetrators (3), international criminal law has had to develop beyond the confines of domestic criminal law if liability is to reflect culpability.

In locating his work upon this fault line, Olásolo aims to systematically analyse the approach of the International Criminal Court (ICC) and other Ad hoc Tribunals to this most pressing issue in international criminal law. It might be thought that familiarity with this problem would breed contempt. After all, Olásolo is far from alone in recognising that ‘it becomes increasingly difficult to pin blame on indictees the higher such persons are situated in a criminal enterprise’. Nonetheless, the scale of his work sets *The Criminal Responsibility of Senior Political and Military Leaders* apart from other writing on the issue. In the five substantial chapters of this study, Olásolo first introduces the problem of attributing liability to figures in positions of leadership and then compares applying principal and accessorial liability to such cases before analysing the different ways in which both types of liability have been developed by international tribunals.

When the Ad hoc Tribunals began their work in the aftermath of conflicts in the former Yugoslavia (ICTY) and Rwanda (ICTR), Olásolo notes that they were confronted with a particular problem. Different forms of secondary liability

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1) The scale of many international criminal law cases is exemplified by the recent ICTY decision in *Prosecutor v. Ante Gotovina* (Judgment, 15 Apr. 2011, ICTY, IT-06-90-T) which ran to fully 2685 paragraphs.
for leadership activities were, as the ICTY Appeals Chamber noted in the Tadić case, ‘firmly established in customary international law’. Nonetheless, as Stefano Manacorda and Chantal Meloni recently asserted, ‘recourse to modes of participation other than commission, such as ordering, planning and instigating – which are firmly established in international law – often appears unsatisfactory in these cases’. Leaders, responsible for subordinates or followers who collectively committed extensive breaches of criminal law, could not appropriately be treated as mere accessories to these crimes (20). Therefore, the ICTY and the ICTR alighted on the possibility of using the joint criminal enterprise doctrine to attribute primary liability to all individuals who make contributions to a crime ‘with the aim of furthering the common criminal purpose’ (34). This solution, as Olásolo recounts, created a further difficulty in that, if joint criminal enterprise doctrine did not already exist as an element of international criminal law, then in applying it the Ad hoc Tribunals would be acting in breach of the principle of legality (nullum crimen sine lege) (39). In spite of very thin support in previous authorities, the ICTY Appeals Chamber in Tadić accepted that joint criminal enterprise sufficed as a form of ‘commission’, a finding that it has ‘never reanalysed’ (47).

The weakness which Tadić thereby introduces into international criminal law provides the central focus of Olásolo’s work. But before turning to address this issue, he takes a diversion to examine the distinction between direct and indirect participation by principals in international law. Whilst undoubtedly interesting and necessary within the work as a whole, this third chapter somewhat breaks up the force of the post-Tadić narrative. The chapter’s evaluation of omissions liability under international criminal law nonetheless includes a particularly valuable discussion of the doctrine of superior/command responsibility under Article 28 of the Rome Statute establishing the ICC, which provides for a distinct offence of dereliction of duty where a superior fails to supervise his subordinates. Olásolo recognises this as a form of accessory liability (108) and cautions against its wide application as an alternative to seeking to establish the liability of such actors as principals (109). He thereafter contrasts the command responsibility approach (as a form of secondary liability) with holding individuals responsible

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5) Tadić, supra note 3 at para. 20.


7) See also Manacorda and Meloni, supra note 4, 161.