Book Review

Elies van Sliedregt, ed.

The rapid growth of international law, particularly through the early work of the ICTY and ICTR, necessitated an elaboration of principles of criminal liability that was based on ad hoc synthesis, syncretism and ingenuity. Of course, patchwork law, especially in the field of criminal justice, engenders numerous pitfalls, not least the risk of retroactivity, poor analogies and ultimately failure to deliver true justice. Such questions on the quality of justice delivered by the ad hoc tribunals, as well as by more recent ones, have surfaced and have given rise to serious debates about concepts which most international lawyers take for granted. To make the point, joint criminal enterprise (JCE) still seems random to many scholars – not to mention defence lawyers – as does the application of command responsibility to civilian “leaders”.

Certainly, the rules concerning international crimes and responsibility have not always appeared adequately clear. The thorniest problems are relating to the legal nature of international crimes committed by individuals and considered as serious violations of the rules of humanitarian law. All individuals, including government officials, military commanders, soldiers, militia members, and civilians, are subject to prosecution for war crimes, crimes against humanity, and applicable domestic crimes under international law. International individual criminal responsibility was recognized and applied by the first generation of international criminal tribunals, namely the Nuremberg and Tokyo Tribunals in the early post-World War II era. Individual criminal responsibility for war crimes has been explicitly provided in a number of international treaties since the early 1990s. These include the statutes for the international criminal tribunals for the former Yugoslavia and Rwanda, as well as the Rome Statute of the ICC. Individuals who commit war crimes may be held criminally liable. They may also be held criminally responsible for assisting in, facilitating, aiding, or abetting the commission of a war crime, and can be prosecuted for planning or instigating the commission of a war crime. In addition, civilian officials, military commanders and soldiers who order or

1 Article 25, Rome Statute of the International Criminal Court.
commit crimes against humanity can be held individually liable. Crimes against humanity give rise to universal jurisdiction, do not have a statute of limitations and do not admit the defence of following superior orders.

_Individual Criminal Responsibility in International Law_ discusses the concept of individual criminal responsibility for serious violations of international law (aggression, genocide, crimes against humanity and war crimes). Elies V. Sliedregt, Professor of Criminal Law at the VU University Amsterdam, incorporates a comprehensive discussion on the plurality of offenders, particularly when it comes to the execution of the crime. Sliedregt highlights that:

international crimes often presuppose an intellectual perpetrator or mastermind, pulling the strings. This can be one person, but also a group of people gathered together in a political or military structure... Traditional forms of liability, such as direct commission, instigation and aiding and abetting/complicity liability are not always attuned to this type of criminality (p. 21).

The book is based on the author’s widely-acclaimed Ph.D.-thesis on the criminal responsibility of individuals for serious violations of international humanitarian law, defended in 2003 at Tilburg University. The author benefits from years of academic research and also of having been a deputy judge at the District Court of Amsterdam and a visiting professional at the ICC. Professor Sliedregt distinguishesably builds on her prior research and uses a comparative and doctrinal method to discuss international criminal responsibility.

Sliedregt splits the book into three parts. The first part of the book sets the historical ground work of criminal responsibility in international law. The origins of the rules are examined and the rules of international law are set out. Sliedregt interestingly begins with the supposition that ‘waging of war is inherent in mankind’ and refers to war as a ‘social phenomenon’ and “law” standing as ‘chivalrous code’ (p. 3). The author appropriately progresses in chapter I to give a brief introduction on the development of international criminal responsibility in international law. Though limited in its coverage (9 pages), it sets the basis for the ensuing development of the author’s thesis. Chapter I provides a commentary on: war crimes law to international criminal responsibility, state responsibility vis-à-vis individual responsibility, and background to international criminal law. Rather very appropriately the author swiftly leads the reader to the concept of collective responsibility. In this second chapter, she deals with the historical background to collective responsibility. War criminality often

2 Article 7, Rome Statute of the International Criminal Court.