Book Review

Fannie Lafontaine


Seizing a national court of the perpetration of the international crimes of genocide, crimes against humanity and war crimes is a serious challenge for states. Since the adoption of the Rome Statute of the International Criminal Court, some countries have adopted national laws implementing their international commitment to fight impunity. Canada is amongst those countries since the adoption of the Crimes against Humanity and War Crimes Act in 2000.

The Crimes against Humanity and War Crimes Act 2000 is the result of a slow evolution through various Canadian governments in power since the end of World War II. At the end of the War, Canada was not one of the most active states on finding and accusing war criminals. This ambivalent approach changed with the global and national Canadian discourse around fundamental rights that arose in the 1980s. Not only was there pressure by NGOs to ensure that the prohibition on legal retroactivity did not allow war criminals to escape the law, but also the Deschênes Commission was created. The Commission’s findings justified introducing specific war crimes offenses into the Canadian Criminal Code. Despite a disappointing first judicial decision, Canada subsequently positioned itself as a leader at the diplomatic Rome Conference in the 1990s, which resulted in the adoption of the Rome Statute. The Crimes against Humanity and War Crimes Act 2000 reflects this evolution.

Despite the adoption of this new law, it took several years in order to see the Act interpreted before Canadian courts. The decisions issued to date offer only a partial analysis of the Act or are ongoing. Consequently, Professor Fannie Lafontaine’s book is a first on the topic. This book’s main objective is to present

the legislative choices made by Canada in the fight against impunity. The author deals successively with Canadian courts' jurisdiction, the definitions of international crimes and principles of criminal responsibility. In doing so, she firmly positioned herself in favour of prosecutions by Canada of international crimes. Therefore, through this book, the author defends the legitimacy and implementation of such a law in national territory and provides a meticulous, detailed and in-depth analysis of the Act in light of Canadian and international criminal law.

The book is separated into three parts, each divided into two chapters. The first part examines the Canadian context since the 1980s. After reviewing the Canadian historical context in the first chapter, Fannie Lafontaine turns to jurisprudential questions in the second chapter. Here she considers debates on universal jurisdiction as dealt with in Canadian law and the exercise of jurisdiction by the Attorney General of Canada. The author makes an important contribution on the retrospective effect of these crimes (pp. 25, 36–39), with reference to sections 6(1) and (3) of the Act. She explains that it is possible to prosecute an individual for the crimes listed if, at the time of the facts, they were considered crimes under customary international law, international legal conventions or through the principles of law recognised in cases of crimes against humanity and genocide - regardless of whether the crime was recognised under national law when the acts were committed. The retrospective effect of the crimes - as distinct from the retroactive effect - is thus acknowledged while enabling customary international law on the issue, in conformity with the Act (pp. 25; 36–38; 104 and following).

The book's second part goes beyond a strict analysis of the Act. The author examines potential interactions between international and Canadian law, highlighting the specificities and ambiguities of the Act. Ably navigating the international jurisprudence's subtleties, in the third chapter she sets and adheres to the rationale supporting the national criminalization of international crimes. She then addresses the general principles applicable to all international crimes, notably the reliance on customary international law. She then leans on the delicate issue of determining the applicable system of law to the underlying offenses. The author adopts a strong position in favour of the application of international law, including customary law, to solve these issues. Indeed, Canadian law is based on the Rome Statute as a customary law interpretative tool. Therefore, according to Lafontaine, the international law application to international crimes, as the underlying offenses, has the effect of introducing interpretative distinctions for the Canadian judge who is used to decide, for example, on a national murder case. However, these distinctions could be resolved if the national court authorised the consideration of