Elinor Fry


Nowadays, international criminal justice can be considered a “fashionable subject”. Hence, there has been a great deal of literature devoted to the practice of international criminal law by tribunals (domestic, international and hybrid) and the case law resulting from it. Nevertheless, *The Contours of International Prosecutions* is not one publication among so many others. Elinor Fry, by centering her research on the particular features of international crimes, sets out a new approach to a crucial challenge of international criminal law: “jurisdictional and factual demarcation of international crimes prosecutions”.¹

The angle selected by the author allows her to avoid some *topoi*, such as the distinction between common and civil law traditions or the specific characteristics of each international criminal tribunal. Yet, these subjects are not ignored but integrated into this new and enriching viewpoint. To do so, after having explored the “typical nature of international crimes”² (Part I), the book explores the outer limits of international criminal prosecution, both at the micro level of a case (Part II), and at the macro level of the jurisdictional system, focusing on the International Criminal Court (Part III).

As the result of Ph.D. research carried out by the author while she was working for various institutions (universities as well as courts), *The Contours of International Prosecutions* combines all the features expected from an academic product. Throughout the book the argumentation is educational and the author thoroughly explains each step of her reasoning. Even when tackling difficult subjects, Elinor Fry nevertheless uses simple and illustrative examples. For instance, one of the book’s main topics is the distinction between evidentiary (or subsidiary) facts – which are those “providing background information or indirect proof of material facts”³ and material facts – those “upon which the verdict is critically dependent”⁴. In order to shed some light on this fine distinction, the author uses the example of an ordinary murder

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⁴ *Prosecutor v. NUON Chea et al.*, Decision on Defence Preliminary Objections (Statute of Limitations on Domestic Crimes), 002/19-09-2007-ECCC/TC, TC, 22 September 2011, para. 19.
and decomposes each constituent fact.\textsuperscript{5} In pursuit of the same educational goal, the text is completed by a diagram illustrating the relationship between facts, evidence and charges.\textsuperscript{6}

However, the academic aspect of the publication should not obscure the greatest strength of the book: the author’s detailed knowledge of the law and practice of criminal tribunals. If the book does not aim to provide an exhaustive comparison of the different criminal tribunals, whenever necessary it stresses the courts’ diverging perceptions on a given topic. The extract concerning the criminal courts’ indictments emphasizes the striking differences of the content and degree of specificity of the indictments before each tribunal.\textsuperscript{7} The reader discovers that while at first indictments were not sufficiently precise with regard to the establishment of the link between the accused and the crimes, the recent practice has overcome this flaw.

Another strength of the publication is that the entire argumentation is enriched by case law. To take but one example, several cases are mentioned to point out the practical difficulties in finding reliable evidence. Such references, which are always paired with the pertinent facts, allow the reader to bear in mind that theoretical international criminal law issues may have serious counterparts in practice. On the particular subject of evidence reliability, the lack of reliable witnesses can sometimes drive the prosecution to drop its case.\textsuperscript{8} It should also be noted that the use of international criminal case law is especially relevant, as the reader is not overwhelmed with a striking number of cases.

The author’s experience is further revealed by her thorough knowledge of the procedural mechanisms existing before various international criminal tribunals. A whole section is dedicated to the International Criminal Court’s Regulation 55 that “allows the Chamber to modify the legal characterization of facts in its final judgment as long as the new legal label does not exceed the facts and circumstances described in the charges”.\textsuperscript{9} There, the author describes all the aspects and impacts of such regulation, again illustrating the description with diverse International Criminal Court cases.

The last chapter of the publication is, without doubt, one of its added values. This excerpt is dedicated to the International Criminal Court’s jurisdictional limits, which are illustrated by two examples taken from recent developments.


\textsuperscript{6} Ibid., “Evidence, Facts, and Charges”, Appendix 1, 157.

\textsuperscript{7} Ibid., 126.

\textsuperscript{8} Ibid., 26.

\textsuperscript{9} Ibid., 81.