
PREFACE

In recent times, following the end of the Cold War, the international community has embarked on a policy of prosecuting those who commit genocide, crimes against humanity and war crimes – known today as “core crimes.” It has chosen this course in order to promote international peace, achieve reconciliation and deter future political and military leaders from committing such crimes. International courts have been established to give effect to this policy. The International Criminal Court, the ad hoc tribunals for the former Yugoslavia and Rwanda and the Special Criminal Court for Sierra Leone provide for the prosecution of individuals who have committed core crimes, while accusations that states have committed such crimes increasingly are brought before the International Court of Justice.

However, most opportunities for the prosecution of core crimes arise before national courts. The Statute of the International Criminal Court acknowledges this in its acceptance of the principle of complementarity which gives primary responsibility for trying core criminals to national courts. Some States have enacted legislation empowering their courts to prosecute core crimes, defined in accordance with the definitions of these crimes contained in the Rome Statute of the International Criminal Court. But most States have not done so. Questions arise as to whether the courts of such States will prosecute core crimes and, if so, on what legal basis. Or whether they will refuse to prosecute on the ground that such crimes are unknown to the national legal order.

Issues of this kind are the subject of Ward Ferdinandusse’s excellent study.

Ferdinandusse argues that in some cases prosecutions of core crimes have succeeded before national courts without national legislation incorporating such international crimes. Moreover, he claims that there are sound legal arguments in favour of the direct application of international law to enable the prosecution of such crimes – because the law is binding without it being transformed into national law by domestic legislation.

Ferdinandusse accepts that the direct application of international criminal law in such cases presents problems. Domestic courts, unfamiliar with international law, find obstacles in the way of direct application in notions of state sovereignty, the separation of powers and the principle of legality. However, Ferdinandusse maintains that there are competing principles which oblige national courts to prosecute international crimes in the absence of implementing legislation. International humanitarian law obliges national courts to apply core crimes directly; and notions of *jus cogens* do likewise. Moreover, the rule that national courts must interpret national law in accordance with international law – the principle of consistent interpretation – ensures that courts will give direct effect to international criminal law. This is emphasized by the rule of international law that imposes on States a duty to prosecute or extradite serious international crimes. Moreover, Ferdinandusse ar-

gues that States should prosecute such crimes as international crimes and not simply as ordinary crimes, such as murder.

Despite international support for the prosecution of core crimes, such prosecutions are rare before national courts. When they do occur they frequently fail as a result of obstructive domestic law institutions and doctrines. To aggravate matters, amnesty laws sometimes block the prosecution of core crimes while the International Court of Justice has held, in the unfortunate Arrest Warrant Case of 2002, that senior government officials enjoy immunity from prosecution for core crimes before national courts. This is a serious problem that threatens the credibility of the international commitment to the prosecution of core crimes. Ward Ferdinandusse's study highlights this problem but at the same time presents compelling legal arguments in favour of the direct application of international core crimes by national courts. He shows convincingly that domestic legal impediments to such prosecutions are not insurmountable and that national law and international law may combine to give effect to the principle of complementarity.

Ward Ferdinandusse has written a book that is rich in international and comparative material, sound on principle and coherent in argument. It deserves the attention of both international and national criminal lawyers as it offers a legal basis for the realization of the commitment to the prosecution of crimes that threaten the welfare of the world.

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