Book Review

Terje Einarsen, ***The Concept of Universal Crimes in International Law*** (Torkel Opsahl Academic EPublisher, 2012) x, 361 pp. ISBN 978-82-93081-33-3

Terje Einarsen's book, *The Concept of Universal Crimes in International Law*,[1] is the first volume in an ambitious multi-volume work, entitled 'Rethinking the Essentials of International Criminal Law and Transnational Justice', that will wrestle with the most pernicious of the bugbears agitating international criminal law: methodology. While this field is a sub-discipline of public international law, international criminal law has been rightly criticized as lacking in a coherent methodology, due to the ad hoc nature of its development.[2] In this first volume of the series, Einarsen — Judge of the Gulating High Court in Norway and academic — confronts head on the difficult task of how crimes covered by international law can and should be classified.

In readable prose that is methodical without being pedantic, Einarsen pursues with great vigour the 'four research aims',[3] which lead him to the ultimate goal of a theoretical template by which international crimes can be classified, in order to provide both doctrinal and legislative coherence and adherence to the legality principle. The first is a wide ranging and mindful review of law and doctrine, focusing on the major scholarly works as well as the contributions of the United Nations and the practice of the international tribunals. The second is the formulation of a set of criteria by which to define and classify crimes under international law, which Einarsen frames as: first, the conduct must manifestly violate a fundamental universal value or interest; second, it must universally be regarded as punishable due to its inherent gravity; third, it must be recognized as a matter of serious international concern; fourth, it must be proscribed by binding rules of international law; and finally, liability and prosecution must not require the consent of any concerned state.[4]

In executing his third aim, Einarsen uses the above framework to compile a list of 150 crimes meeting the criteria, which, in a manner somewhat redolent of M. Cherif Bassiouni's work, he organizes into three groups under their respective headings:[5] first, 'core international crimes'; second, 'other international crimes against the peace and security of mankind'; and third, 'international crimes not dependent on the existence of threats to international peace and security'. Intriguingly, he attaches a gravity clause to each of the specific types of crimes within each group; thus, for example, a number of acts are classified as 'Crimes of aggression' under 'Core International Crimes', 'when constituting manifest violations of the UN Charter by the use of armed force against the sovereignty, territorial integrity or political independence of another state'.[6] So-called 'Grave piracy crimes' and 'Grave trafficking crimes' present themselves as meeting the criteria as well, implicitly expanding outward the idea of what the 'core' international crimes are. Admirably, while acknowledging the controversy and complexity of any attempt to wrestle terrorist crimes into such a framework, Einarsen does not shrink from the task and compiles a list of emerging terrorism offences ripe for acknowledgment for their seriousness and nearly universal condemnation.

The framework, then, is designed to provide a classification mechanism for crimes both *lex lata* and *lex ferenda*, which ultimately drives Einarsen's fourth aim: to suggest that the appropriate analytical platform is usefully

1 T. Einarsen, *The Concept of Universal Crimes in International Law* (Torkel Opsahl Academic EPublisher, 2012).

2 See e.g. M.C. Bassiouni, *Introduction to International Criminal Law* (Transnational Publishers, 2003); D. Robinson, 'The Identity Crisis of International Criminal Law', 21 *Leiden Journal of International Law* (2008) 925.

3 Einarsen, *supra* note 1, at 290.

4 *Ibid.*, at chapter 4.

5 See e.g. M.C. Bassiouni, 'International Crimes: The *Ratione Materiae* of International Criminal Law', in M.C. Bassiouni (ed.), *International Criminal Law*, Vol. 1 (3rd edn., Martinus Nijhoff, 2008) 129.

6 Einarsen, *supra* note 1, at 278 *et seq.*

captured by the notion of *universal crimes*, embracing the five criteria outlined above and replacing the term (and uncertain concept of) 'international' crimes. The change in terminology, he argues, is more than mere window dressing. While 'international' betrays a bias towards interstate normativity, '"universal" emphasizes the justification for international criminal law in common human values embedded in the UN paradigm of international law'.[7] It can also assist 'those institutions authorised to create international law in cooperation with states',[8] by pointing the way towards *lex ferenda* norms whose characteristics cry out for codification alongside existing laws.

While sorting out the conceptual bases of international criminal law is a herculean task, Einarsen has made a solid and thoughtful effort and has constructed a fairly major contribution to the literature. His book is sure to stimulate a continuing and much needed methodological debate among international criminal lawyers, and its readers will doubtless look forward to the three forthcoming titles in the series.

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