

Review of *The Trial Proceedings of the International Criminal Court: ICTY and ICTR Precedents (2005)*, by Karin Calvo-Goller

Upholding the extradition of Augusto Pinochet, Bow Street Magistrate Roland Bartle discussed the streamlined extradition rules established by new conventions within the European Community, and went on to speak of transnational criminal law in more general terms:

The purpose of such Conventions is to assist the forces of law and order to counter the ever increasing sophistication with which international criminals, be they terrorists, drug traffickers, perpetrators of fraud on an international scale and such like, exploit advanced technology and communications to commit their crimes and avoid detection and subsequent apprehension. In recent years a number of such agreements between states have been entered into, including one which has been an important factor in this case, namely the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the United Nations General Assembly on 10th December 1984, referred to for convenience as "The Torture Convention".

These Conventions represent the growing trend of the international community to combine together to outlaw crimes which are abhorrent to civilised society whether they be offences of the kind to which I have referred or crimes of cruelty and violence which may be committed by individuals, by terrorist groups seeking to influence or overthrow democratic governments or by undemocratic governments against their own citizens. This development may be said to presage the day when, for the purposes of extradition, there will be one law for one world.

Magistrate Bartle was speaking of the most significant development of international criminal law in the past century. As he noted, that effort is served by expansive views of national jurisdiction to try offenders. However, in the longer term, transnational tribunals must take up this work. Based on the work of the International Criminal Tribunal for Yugoslavia and the International Criminal Tribunal for Rwanda, the International Court has begun to hear cases of international human rights crimes.

The substantive norms that the ICTY, ICTR and ICC will apply have been the subject of general agreement – at least in broad outline – since the 1945 London Charter that created the Nuremberg Tribunal. The principal problem has been, as is often the case when creating new institutional structures, that of procedure. Indeed, states refusing to submit to the ICC raise procedural objections as the basis of refusal, even though one suspects that these reasons are in some part pretextual.

The ICC procedures are based on the ICTY and ICTR experience. Judges, lawyers and students of international law now have an invaluable resource to understand and to work within those procedures. Dr. Karin C. Calvo-Goller has written "The Trial Proceedings of the International Criminal Court: ICTY and ICTR Precedents, published by the renowned Martinus Nijhoff publishing house. Dr. Calvo-Goller has worked in the United State, Europe and Israel. She holds degrees from the Sorbonne. She is a practicing lawyer and a scholar of the law.

She shows the reader how these tribunals sought to create an acceptable system of procedure by borrowing from civil law and common law countries.

The subject of this book is central to the very legitimacy of transnational legal institutions at this moment in history. The trials now going on and about to begin will teach the world about important historical facts. They will subject significant events to rigorous examination under rules of evidence and procedure that seek to guarantee reliable outcomes. If these tribunals succeed in these tasks, they will validate their own existence and contribute to a general sense that crimes against humanity can be investigated and punished fairly and justly.

I have been reading several recent books on international criminal law and procedure, and I rate this one as indispensable. The reader will find suggested answers to almost any procedural issue that might arise in ICC proceedings. More significantly, however, the reader will find critical insights. For example, most large scale ICTY, ICTY and ICC trials involve extensive use of summary evidence and expert testimony to establish basic facts. Dr. Calvo-Goller questions the fairness of over-reliance on this sort of evidence, because the defense may not have a fair chance to meet it by conducting independent investigation and because the factual basis for an expert or summary conclusion cannot effectively be reached by cross-examination. As a lawyer who has faced this very problem, I was impressed by her grasp of the practical and theoretical issues.

In short, this is an essential book, and deserves a place close at hand for those concerned with these issues.

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