

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

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The Concept of Universal Crimes in International Law addresses the complex issue of international crimes with the aim to examine, among others, whether it may be useful to gradually replace this notion with the concept of universal crimes in further academic analysis and legal debates. This book is the first of a four-part series entitled 'Rethinking the Essential of International Criminal Law and Transitional Justice', and focuses on the concept of universal crimes, its legal basis and surrounding issues. The scope of liability, direct legal consequences, implementation and enforcement of universal crimes will be discussed in later parts of the series.

The author, Terje Einarsen (Head of the Human Rights Committee, Norwegian Judges Association), presents his analysis of the issue in a systematic and practical manner. He starts with identifying the subject matter of universal crimes in Chapter One, followed by an explanation of the nature and special features of universal crimes and their position in the normative and political context in Chapter Two. Chapter Three presents a discussion of the legal bases of universal crimes. In Chapter Four, Einarsen analyses the concept of international crimes, paying particular attention to the differences between the two concepts by looking at the definition provided by international institutions, literature of renowned legal scholars, statements of the international law commission and the Rome Statute. The question of how to classify international crimes to become part of universal crimes is also discussed in Chapter Four. As conclusion, Chapter Five discusses the concept of universal crimes at which point the author proposes the need to develop a United Nations Declaration on Universal Crimes that includes all universal crimes *lex lata* and to place them on an equal footing (p. 317).

Chapter One starts by quoting President Barack Obama's remarks at the Nobel Peace Prize ceremony in Oslo in 2009, which shows the ambiguity surrounding international criminal law. The author continues by discussing the sub-

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ject matter of universal crimes, which are grave crimes, and questioning, among others, two fundamental questions: what are the relevant crimes that may give rise to criminal liability under international law, and why are certain crimes put on the list whereas other serious offences are not (p.4). In the author's opinion, the fragmented nature of international criminal law makes it difficult to answer these questions, thus, this book is an attempt to introduce the concept of universal crimes as a potential tool to provide a unified perspective on international criminal law (p. 5). Chapter One also provides the reader with a preview of the later chapters of the book, a helpful guide to understanding the issues and following the discussion presented.

Although the author regards Chapter Two as a preliminary examination of the concept of universal crimes, it is in fact quite a comprehensive analysis in identifying what a universal crime is. By examining it from the nature of the crimes and the normative and political context, the author gives an insight into the evolution of universal crimes. He continues by explaining their special features, most importantly, the issue of gravity which is central to their identification. At the end of Chapter Two, the author contends that universal crimes require retributive criminal justice although he does not rule out the use of complementary 'restorative' mechanisms, as the case of the South African Truth and Reconciliation Commission. He concludes that the purpose of retributive criminal justice is not only to serve as punishment for the perpetrators but also act as a deterrent for potential new perpetrators (p. 86).

Chapter Three shows the fragmented nature of international criminal law, specifically when it comes to the concept of international crimes which 'in itself is not sufficiently clear to define which crimes are included or even what the conditions for inclusion are' (p. 87). The factors leading to fragmentation of international criminal law among others are the non-existence of uniform criteria for international crimes and the limited jurisdiction of courts thus creating different opinions on the subject of international crimes. One court that has an unlimited jurisdiction (covering all crimes committed after 2002) is the International Criminal Court. In the author's opinion 'it is nonetheless probable that the (International Criminal) Court will become the most important institution for consideration of universal crimes issues' (p.92), however, he also voices his concern that 'it is unlikely that the International Criminal Court will ever be able to function as a comprehensive criminal court system for the enforcement of universal crimes' (p.92). In addition to the three law-creating sources mentioned in article 38 paragraph 1 of the International Court of Justice Statute (multilateral treaties, customary international law and general principles of international law), the author

also includes Security Council resolutions as a law-creating source, though he admits that it is still a controversial one, due to the legal basis or legitimacy of the legislative acts, and, more importantly, the little assurance that the Security Council will act consistently or at all, when it should. The author proposes that the law-creating function of the Security Council needs to be taken into account and further explored, particularly with respect to the concept of universal crimes (p. 124). However, considering the composition of the members of the Security Council, both permanent and non-permanent, and the politics and power that very much influences the resolutions, would it be a suitable law-creating source for the international community? The last part of Chapter Three briefly discusses the various interpretative sources of international law (the jurisprudence of international courts, law literature, United Nations and other international organisations reports and studies) and the principles of prioritisation (*lex superior*, *lex specialis* and *lex posterior*) should there be a conflict between two or more rules having incompatible content. At the end of Chapter Three, Einarsen explains the need to keep a clear distinction between the laws as it is (*lex lata*) and the law as it should be (*lex ferenda*).

Chapter Four is essentially the “heart” of the book as it comprehensively discusses the idea of reconceptualisation of international crimes. By presenting the different concept of international crimes found in the statutes of international institutions such as the International Criminal Tribunal of Former Yugoslavia, International Criminal Tribunal of Rwanda and the International Criminal Court, the scholarly literature, and the International Law Commission, this Chapter shows not only the fragmentation of international criminal law but also its evolution. Further, it continues to answer the fundamental question posed in Chapter One: what are the relevant crimes that may give rise to criminal liability under international law? The approach taken in Chapter Four was to classify international crimes systematically into classes (p. 217) and provide the necessary and sufficient conditions of each international crime. The author has taken a practical approach at the end of Chapter Four by providing a list of international crimes and potential international crimes based on the classes previously discussed and the legal basis of such crimes. This inclusion proves very helpful for students and others who have an interest in international human rights law and international criminal law. The list also appears in Appendix I of the book.

As the closing chapter, Chapter Five reiterated the four research aims of the book, and focused on the fourth aim ‘to examine whether it may be useful to gradually replace the concept of international crimes with the concept of universal crimes’ (p. 292). The author admits that it is an ‘ambitious project and it is a

process that involves considerable debate and reflection by a variety of stakeholders' (p. 292), however, this may be the way forward in addressing the fragmentation and differences in international criminal law. Chapter Five summarises the findings from earlier chapters and elaborates some of the issues, starting with proposing a theoretical definition of universal crimes, which should be, among others, wide enough to cover universal crimes *lex ferenda*. This theoretical definition maybe supplemented by an operational legal definition for the purpose of identifying the universal crimes *lex lata*. The author proposes two theoretical definitions of universal crimes which should be further discussed among relevant scholars and institutions, in order to consolidate the different opinions and concepts of universal crimes that currently exist. It continues by outlining the important features of universal crimes and ends with a proposal of having a United Nations Declaration on Universal Crimes that includes all universal crimes *lex lata*. The author contends that a broadly supported United Nations Declaration would meet the requirements of international legality principle provided that the crimes are identified using the five criteria explained in Chapter Four of the book and the time frame of application is determined for each crime type.

This book delivers a comprehensive analysis on the core issue of universal crimes (what crimes constitute as universal crimes) not only on a theoretical level but also at the practical level, by introducing the idea of the three classes of international crimes and five conditions of universal crimes in Chapter Four. The list of universal crimes provided in Appendix I is useful for anyone with an interest in international humanitarian law. The strength of this book, as mentioned in the beginning of the review, is that it manages to blend a theoretical and academic approach with a practical and factual one, and comes up with ideas on how to resolve the fragmentation of international criminal law. We will eagerly wait for the next book in the four-part series of "Rethinking the Essentials of International Criminal Law and Transitional Justice".