

Kirsten Sellars, 'CRIMES AGAINST INTERNATIONAL PEACE' AND INTERNATIONAL LAW,

Cambridge: Cambridge University Press, 2013, xv + 316 pp

ISBN 978-1-107-02884-5

£70

Kirsten Sellars highly readable book is a diplomatic and legal history of the attempts made during the 20th Century to establish crimes against peace as a separate crime in international law. Her assiduous use of the political and diplomatic record to illuminate the context in which these efforts took place throws light on the solidity of claims made that aggression is the supreme international crime.

Beginning in the Post World War I era we are given a more complete picture than the normal tour through the various articles of the Treaty of Versailles relating to the attempted prosecution of the Kaiser. She points out, for example, that public supporters of criminalisation such as Britain had an ambivalent relationship with this political child of the conflict and were privately urging the Dutch to afford the Kaiser asylum, which they did. She is particularly adept at revealing the roots of many of the concepts that have come to dominate the debate. We learn for example that the definition of aggression sanctioned by the UN General Assembly in 1974 and used in modified form by the States Parties to the Rome Statute in 2011, has its roots in a suggestion made by the USSR seven days after Hitler was appointed Chancellor. She corrects the view that the crime of aggression was largely a US product, pointing out the significant contribution made by Russian criminologist AN Trainin in this regard. In the background looms his political 'handler', former Stalinist Show-Trial Prosecutor Andrey Vyshinsky, who had another agenda. She shows that in considerable degree, that he and other Soviet leaders, like senior political figures in the US, saw the crime as a means not of moral retribution but of control of their former enemies. In her view, the Allies consciously created a judicial precedent they had no intention of applying to themselves. Speedy trial provisions, judicial control of admission of evidence, were all designed to avoid *tu quoque* arguments. Robert Jackson, the major architect of Nuremberg was not really interested in legality but in legislating.

Sellars' uses a close reading of the trial record in regard to both Nuremberg and Tokyo, rather than revisiting the already well-worn judgements, to illustrate that the Tokyo judgment on crimes against peace, like Nuremberg's, represents the confluence of US moralism and legalism with the same goal, US dominance. Japanese Defence Counsel and Professor of Law at the University of Tokyo, Kenzo Takanayagi, certainly one of the most impressive jurists of the time, used his positivist scalpel to cut through much of this bluster, but to no avail. The US view of the judgment unsurprisingly soon soured as its utility in the Cold War era was questioned by policy heavyweights like George Kennan. In the post-war period it is the Indian Judge Pal's dissent at Tokyo, not the Nuremberg majority judgement, which resonated most strongly in the post-war world of self-determination struggles. The operative life of Nuremberg principles was in her view from 1945 to 48, a mere three years.

Her recount of attempts within the UN to define aggression highlights the US push for rights to pre-emptive self-defence and decolonising states trying to carve out an exception for colonial wars. She records the insistence of the British that only 'wars of aggression' and not all acts of aggression are criminal in the General Assembly's definition of Aggression in 1974, which has been UK policy ever since, including in the negotiations of the Rome Statute and its amendments. The agenda has always been to pull the teeth of their own creation.

Is the author hostile to crimes against peace? I think the answer is that Sellars is hostile to what we have made of history in order to justify the existence of these crimes in positive international law. Many good laws are the product of bad intentions; the challenge this book lays down to the advocates of crimes against peace is that its history shows that the crime is ultimately of an ad hoc nature. It was directed only at the Axis powers after World War II. It exempted anticolonial struggles after definition in the General Assembly in 1974. It is not universal. In her view, order is a precondition of law and the problem for positing aggression as an international crime is that there has been, and probably still is, insufficient international order to permit its non-selective application. The less powerful actors in the international community try to preserve their sovereignty through its deterrent powers but ironically they must breach the sovereignty of the more powerful actors in order to apply that crime. She does not believe the portents are good for the crime of aggression even though it is on the brink of finding itself within the active jurisdiction of the International Criminal Court.

But the book is more than a history of aggression; the product of comprehensive and in-depth archival research from an enviable range of sources, it is also an excellent general history of the development of international criminal law itself. There are many good books on the road to international criminal law, but if you were to read just one, I would recommend this. Its lucid pungent analysis makes it a pleasure to read.

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