

**SÉBASTIEN JODOIN AND MARIE-CLAIRE CORDONIER
SEGGER, EDS, *SUSTAINABLE DEVELOPMENT,
INTERNATIONAL CRIMINAL JUSTICE, AND TREATY
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Can the international criminal architecture, which has accomplished so much in the last decades to prevent and punish acts that “shock the conscience of mankind”¹, be an effective tool to halt unsustainable development and its potentially dramatic consequences on life on Earth generally, and on humanity in particular? This is the question at the center of the timely book edited by Sébastien Jodoin and Marie-Claire Cordonier Segger that is examined in this review. In 2012, the nations of the world gathered at the United Nations Conference on Sustainable Development in Rio de Janeiro and acknowledged

that since 1992 there have been areas of insufficient progress and setbacks in the integration of the three dimensions of sustainable development [i.e. the environmental, economic and social dimensions] [...] which have threatened the ability of all countries, in particular developing countries, to achieve sustainable development.²

In this pressing context, *Sustainable Development, International Criminal Justice, and Treaty Implementation* serves as a meeting ground to bring together experts from a variety of countries and fields to reflect on whether one of the oldest and most widely used forms of social control, criminal law, has a role to play. More specifically, the contributors to this thought-provoking book address how international criminal law could contribute to achieving sustainable development in its many dimensions, as well as its possible shortcomings.

Both editors of this volume have original and international careers, and are experts in sustainable development law. Sébastien Jodoin is an Assistant Professor at the Faculty of Law of McGill University, a PhD student in environmental studies at Yale University, and Faculty Associate of the Governance, Environment & Markets Initiative at Yale University. Marie-Claire Cordonier Segger is Head of Economic Law at the International Development Law Organization, Italy, Councillor of the World Future Council, Affiliate Fellow at the Lauterpacht Center for International

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¹ *Prosecutor v DU[KO TADI] a/k/a/ “DULE”, IT-94-1-T, Opinion and Judgment (7 May 1997) at para 653 (International Criminal Tribunal for the Yugoslavia, Trial Chamber), online: ICTY <<http://www.icty.org>>.*

² *The Future We Want*, GA Res 288, UNGAOR, 66th Sess, UN Doc A/RES/66/288, (2012) at 20.

Law at Cambridge University, Senior Director of the Centre for International Sustainable Development Law, and lectures in numerous universities. Their choice of contributors is particularly appropriate and reflects the diversity of their own experiences, since they bring together practitioners from international criminal tribunals, legal scholars, and economists into a multifaceted conversation on the issues raised. Their approaches are critical, comparative, and original, and provide a wealth of examples coming both from national experiences and international law.

“Sustainable Development, International Criminal Justice, and Treaty Implementation” is a cutting-edge collection of research. As I will suggest after presenting its different chapters, its main strength resides in convincingly making the argument for further consideration of international criminal law and sustainable development as two mutually reinforcing fields, and in proposing novel and concrete ideas as to how this can be achieved. This is all the more admirable in view of the important—sometimes excessive—breadth of the concept of sustainable development, which can generally be defined as: “Development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”³ The main weakness of this book, on the contrary, is to have devoted comparatively little attention to assessing the extent to which criminalisation, as opposed to other forms of regulation of human conduct, promises to be an effective tool to implement the various dimensions of sustainable development in practice.

The contributions to *Sustainable Development, International Criminal Justice, and Treaty Implementation* are divided into four thematic parts. The first, “Accountability and Sustainability in International Justice,” focuses on how international criminal law could provide new forms of liability for serious forms of economic, social, and environmental harm. Jodoin and Cordonier Segger present the objectives of the book in Chapter 1, namely to provide a new perspective on “the contribution of criminal law to the realisation of more sustainable development, and the potential of sustainable development law to prevent conditions driving criminal behaviour.”⁴ In Chapter 2, Cordonier Segger deepens the analysis of the interaction between sustainable development and preventing crime. She argues that these are two mutually supporting objectives, in that severe degradation of social and ecological systems may make criminal behaviour more likely and more difficult to prevent, and because many international crimes under the *Rome Statute of the International Criminal Court*⁵ protect, during wartime, dimensions of sustainable development, such as the natural environment, natural resources, and food and water. In Chapter 3, Gerry Simpson observes that, while the proposal to establish new environmental crimes that would target the unsustainable behaviour of individuals is often met with a sense that this would be “vulgar, unjust, and implausible”, international criminal law may be slowly moving towards “addressing structural causes of mass atrocity or

³ World Commission on Environment and Development, *Report of the World Commission on Environment and Development: Our Common Future*, WCED, 1987, UN Doc A/42/427 at 49.

⁴ Sébastien Jodoin and Marie-Claire Cordonier Segger, eds, *Sustainable Development, International Criminal Justice, and Treaty Implementation* (New York: Cambridge University Press, 2013) at 5 [Jodoin and Cordonier Segger].

⁵ *Rome Statute of the International Criminal Court*, 17 July 1998, 2187 UNTS 3 [*Rome Statute*].

threats to international peace and security that result from economic and environmental choices, rather than more obvious forms of violence.”⁶ On the other hand, he also questions the reflex to identify criminalisation as the only way to address anti-social behaviour, especially at a time where experts in many fields question the model of prison-based criminal law. Finally, in Chapter 5, Frédéric Mégret examines the arguments in favour of establishing an international environmental crime. He advances concrete proposals for the contours of a crime prohibiting generalised or systematic harm inflicted to the environment that is intended to cause widespread, long-term, severe, or irreversible damage⁷, and advances that the arguments for universal jurisdiction in such cases are stronger than in the case of other international crimes, because of their global dimension.

The second part of the book, “Sustainable Development and International Crimes”, focuses on how existing international criminal law could apply to sanction conduct that destroys the basic underlying conditions of sustainable development. In Chapter 5, Matthew Gillet examines the war crime of causing long-term damage to the environment, under article 8(2)(b)(iv) of the *Rome Statute*, and the indirect –or anthropocentric– protection offered to the environment by war crimes, crimes against humanity, and the prohibition of genocide. He describes the lack of any conviction for the war crime of causing long-term damage to the environment as a “collective failing of the international community”, and calls for the development of an ecocentric approach to international criminal law. In Chapter 6, Salim A Nakhjavani considers the possibility of addressing violations of social and economic rights recognised by international human rights law through international criminal law. He argues that the crime of persecution, under article 7(1)(h) of the *Rome Statute*, offers the possibility of “significant conceptual breeding ground” for the emergence of new approaches that take international human rights into account.⁸ In Chapter 7, Roger O’Keefe presents the potential of the prohibition of international crimes to prevent the intentional destruction and misappropriation of tangible cultural heritage. He observes that these are particularly relevant to preserving the common heritage of future generations. In Chapter 8, Alexandra R Harrington examines the potential of the prohibition of the crime of aggression, rendered operative with the definition adopted in 2010 at the Kampala Review Conference of the *Rome Statute*, to prevent environmental and socioeconomic harm. She argues that it has the potential to address “future large-scale environmental and associated socioeconomic harms”, under the condition that complex questions, such as the commission of such acts outside of wartime, the level of required intent, and the identification of adequate forms of compensation for the victims, be addressed.

The third part, “Sustainable Development and the Mechanisms of International Criminal Justice”, proposes a reflection on how the mechanisms and processes of international criminal justice themselves can contribute to sustainable development. In Chapter 9, Jarrod Hepburn argues that the principle of

⁶ Jodoin and Cordonier Segger, *supra* note 4 at 40.

⁷ *Ibid* at 65.

⁸ *Ibid* at 119.

intergenerational equity and the rights of future generations are at the heart of international criminal law. While the penal logic may focus on past wrongs, he shows how

the development of a historical record of a conflict, support for peace and reconciliation of fractured societies, prevention of international crimes [...] through public memorialisation, capacity building in domestic judicial systems, and a sense of closure for the victims [all have a fundamentally forward-looking dimension]⁹.

In Chapter 10, Ken Roberts addresses the issue of corporate liability and complicity in international crimes committed in the context of natural resource extraction and other business activities in conflict-affected countries. He highlights that modes of liability such as joint criminal enterprise, co-perpetratorship, superior responsibility, and aiding and abetting may soon be applied to corporate officers and leaders. In Chapter 11, Fannie Lafontaine and Alain-Guy Tachou Sipowo assess the potential of international criminal law to contribute to peacebuilding and sustainable development, based on a review of concrete case studies. They argue that accountability for the gravest international crime is now firmly embedded in both international rhetoric and practice, and provides important opportunities for strengthening domestic legal systems, reparations, and truth-telling. Finally, in Chapter 12, Pubudu Sachithanandan studies how regimes for the reparation of victims of international crime could be applied in a way that furthers sustainable development. He argues that this field offers numerous possibilities for furthering its many dimensions, including empowerment, gender equality, co-operation, equity, and security.

The fourth part of the book, “Making International Criminal Justice More Sustainable,” focuses on the need for greater interaction between the fields of international criminal law and sustainable development, both at the substantive level and through collaborative institutional practices. In Chapter 13, Charles Séguin argues that various characteristics of unsustainable development, including economic inequality and underdevelopment, resource scarcity, and natural resource predation, may create contexts where armed conflicts and the commission of international crimes are more likely. He also identifies two particular challenges, namely the short-term costs involved with transitioning from an unsustainable to a sustainable form of development, and the difficulty of achieving cooperation among States to respond to such a global challenge. In Chapter 14, Lisa J Laplante argues that transitional justice should also address historical inequality and violations of economic, social, and cultural rights. By addressing “structural violence” against given populations and promoting social justice, she argues, truth commissions would protect more effectively current and future generations from conflict. In Chapter 15, Riane Eisler argues that international criminal law should develop a more integral approach to preventing crime against present and future generations, one “that takes into account what is considered normal and acceptable in all spheres of life, both public and

⁹ *Ibid* at 184.

private, and in all relations, from intimate to international.”¹⁰ In particular, she argues for a greater focus to be put on violations to the rights of women and children that occur in the private sphere and that pose an obstacle to achieving peace and development. In Chapter 16, Maja Göpel argues for expanding the doctrine of “Responsibility to Protect” to include an obligation to adopt laws and policies guaranteeing social, cultural, environmental, and economic rights. She observes the necessity of counting with an “early warning system” for situations that already have an unsustainable imprint and generate conditions of life for future generations that are incompatible with human rights standards and that make crime more likely, and she proposes establishing a United Nations Human Rights Council special procedure to this end.

Jodoin finally concludes the book by arguing for the establishment of a new “crime against future generations” that would go beyond the limits of existing international criminal law with regards to achieving sustainable development. Such a crime would target a non-exhaustive list of named acts that impose “severe consequences on the long-term health, safety, or means of survival of any identifiable group or collectivity.”¹¹ This, Jodoin notes, could be achieved either through litigation before the International Criminal Court, by amending the *Rome Statute* or, more realistically, by the adoption of a new stand-alone international convention that would commit States to prosecuting such crimes at the domestic level.

The main strength of *Sustainable Development, International Criminal Justice, and Treaty Implementation* is that it effectively and eloquently makes the argument that international criminal law and sustainable development are mutually reinforcing goals. The authors show how the application of existing international crimes could positively affect the environmental, economic, and social dimensions of sustainable development. As highlighted by the volume, this could occur through international criminal law preventing wealth disparity, promoting the social inclusion of women, averting land and resource appropriation, making sustainability an integral feature of truth-telling and victims’ reparation, and preventing the intentional destruction and misappropriation of tangible cultural heritage. The contributors also show how pursuing sustainable development can effectively prevent crime, in that economic inequality and underdevelopment, resource scarcity, and natural resource predation may make criminal behaviour more likely and more difficult to prevent.

An exciting observation flows from the above: the successful implementation of other fields of international law may also be mutually reinforcing with the promotion of sustainable development. The hybridisation of international criminal law and sustainable development law proposed in this book, if successful, could thus provide a roadmap for replication in other fields, such as public international law more generally, international human rights law, international humanitarian law, or indigenous peoples’ rights. This compendium of articles even suggests that research could be undertaken on whether and to what extent domestic fields of law, such as

¹⁰ *Ibid* at 305.

¹¹ *Ibid* at 353.

civil rights, labour standards law, poverty law, or health law have a relationship of mutual reinforcement with sustainability.

A second strength of this book is to have formulated a series of concrete, original, and challenging ideas about how international criminal law could evolve to help us meet the urgent challenge of achieving more sustainable development. The authors show how the international criminal framework, under its present form, has many limitations in this regard, including the restriction of many international crimes to wartime, the existing narrow *mens rea* requirements, and the high level of gravity generally required. In response, the authors have proposed, among other things, adopting a new crime against the environment applicable during peacetime, adopting a new crime of violating social and economic rights, expanding the doctrine of Responsibility to Protect to guarantee social, cultural, environmental, and economic rights, and adopting a new crime against future generations. Through this project, Jodoin and Cordonier Segger have thus contributed to identifying many concrete avenues for achieving legal and policy reform.

The main weakness of *Sustainable Development, International Criminal Justice, and Treaty Implementation* is probably to leave the reader yearning for a more extensive analysis of the issues raised from a criminological perspective. Although the book deals above all with proposals to penalise new kinds of behaviour, one may be surprised that none of the contributions analysed the issue of sustainable development from the perspective of the science of crime and punishment. What is the profile of those individuals who engage in conduct that, according to the contributors to this book, could eventually warrant conviction for the gravest of all crimes? What are the factors associated with the commission of such crimes by these individuals? What are the criminological objectives (deterrence, denunciation, retribution, incapacitation, reparation, restitution, restoration, redistribution, rehabilitation, etc.) that international criminal convictions would achieve, and what are those that it would not promote? What are the possible alternative means of attaining these objectives and how do they compare with having recourse to international criminal law? These are questions that may come to the mind of the reader of this collective book who wonders to what extent formulating new international crimes would yield the results hoped for in practice.

The question of the effectiveness of criminal law in response to unsustainable development is not altogether absent from the volume. Mégret, for example, argues that criminal prosecutions for pollution have achieved “very substantial” deterrent effects and that these should be even greater where an international crime established¹². Simpson, on the contrary, asks whether international criminal lawyers are not mounting themselves on “a dead horse”¹³ by prioritising retributive justice at a moment when domestic and international jurisdictions are increasingly recognising the importance of restorative and transitional justice

¹² *Ibid* at 54.

¹³ *Ibid* at 49.

theories¹⁴. However, no in-depth discussion is devoted exclusively to these issues. The case from a criminological perspective for the various new international crimes proposed in this book, especially in the context of an International Criminal Court which is still at its incipient stage, would certainly have made the overall argument of the volume even more compelling. However, its editors and authors may have deliberately left such more practical issues for a later stage, and decided to focus on the need to establish, at a theoretical level, the interconnectivity and complementarity of international criminal law and sustainable development.

In conclusion, *Sustainable Development, International Criminal Justice, and Treaty Implementation* opens new horizons for the international criminal regime. It calls for the adoption of new international crimes to guarantee the achievement of sustainable development that could, by virtue of the principle of complementarity between international and domestic jurisdictions, have a profoundly transformational impact on the conduct of human activity throughout the globe. This invitation is truly innovative, in that international criminal law has generally been considered ill-suited to prevent and punish large-scale violations of economic, social, cultural, and environmental rights. Thanks to the editors and contributors of this book, the question of identifying which precise acts should be defined as new international crimes, based on the gravity of their adverse impacts on sustainable development and the appropriateness of such measure, is resolutely on the agenda for future research and law reform.

¹⁴ See e.g. Gerry Johnstone and Daniel W Van Ness, eds, *Handbook of Restorative Justice*, (Portland, OR: Willan, 2007); Pablo de Greiff and Roger Duthie, eds, *Transitional Justice and Development: Making Connections*, (New York: Social Science Research Council, 2009).