

# CRITICAL ESSAYS

## EVE LA HAYE ON WAR CRIMES IN INTERNAL ARMED CONFLICTS

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The last decade and a half have witnessed a remarkable evolution in the legal protection of victims of civil wars. Two interrelated disciplines of public international law, namely international humanitarian law and international criminal law, are primarily responsible for this development.

International humanitarian law has expanded the range of its rules and principles considered applicable not only to archetypical armed conflicts between states but also to those within them. Until recently, these expansions were often the results of incremental, haphazard and awkward political processes. Today, they are declared to have occurred by judicial bodies more boldly and with an increasing frequency.

Meanwhile, international criminal law has "come of age" – to borrow the expression used by Theodor Meron.<sup>1</sup> In the post-Cold War era, the conventional wisdom that war criminality would concern itself exclusively with inter-state armed conflicts came under strain. Atrocities in the Balkans and elsewhere provided credence for the view that certain belligerent conduct in civil wars is not only unlawful but also, or should also be, criminal under international law.

In her *War Crimes in Internal Armed Conflicts*, Eve La Haye explores central issues of law and institutions surrounding the prosecution of war crimes committed in non-international armed conflicts. She offers a timely, pertinent and useful retrospection into an area of law that is undergoing rapid development. La Haye's well-researched and highly readable work deserves a prominent place in the library of every serious student and practitioner of international humanitarian law and international criminal law.

La Haye adopts an orthodox and logical approach to the subject. In Chapter 1, she discusses the definition of an armed conflict in general and a non-international armed conflict in particular. According to La Haye, whether a situation has passed the "lower threshold" of an internal armed conflict depends on the extent to which the non-state armed group involved in that situation is organised. An internal conflict reaches its "upper threshold" with the involvement of two or more states or under several exceptional circumstances (e.g., the recognition of belligerency and wars of self-determination). Of particular relevance here are internal armed conflicts being "internationalised" by dint of foreign and/or UN intervention.

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<sup>1</sup> Theodor Meron, *War Crimes Law Comes of Age*, 92 AM. J. INT'L L. 462–468 (1998).

The lack of a universally accepted definition of internal armed conflict is exacerbated by states retaining their right of auto-interpretation rather than submitting to a truly compulsory international jurisdiction.

Chapter 2 examines substantive rules of international humanitarian law applicable in internal armed conflicts. La Haye's discussion begins with an overview of the pre- and post-1949 eras, marked by the adoption of Article 3 common to the Geneva Conventions that year. La Haye then reviews the pedigree and content of customary rules considered applicable in twenty-first century internal armed conflicts. She affirms that the rules contained in common Article 3, as well as those contained in some provisions of the 1977 Second Additional Protocol, reflect custom. She also builds on the seminal 1995 *Tadić* Jurisdiction Decision issued by the Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia (ICTY),<sup>2</sup> in addition to the practice of the parties involved in internal conflicts, third states and international organisations. These materials indicate that internal armed conflicts are now governed by a growing body of customary rules relating to methods of warfare and victim protection. Nevertheless, a gap remains between the rules applicable in international armed conflicts and those applicable in non-international armed conflicts.

Chapter 3 briefly considers how international law envisages war crimes prosecutions. In international armed conflicts, belligerents enjoy a well-established customary right to try enemy war crimes suspects. The Geneva Conventions and the 1977 First Additional Protocol I also specify "grave breaches" which each contracting party is duty-bound to criminalise in international armed conflicts. Extending this standard war crimes regime to internal armed conflicts raises conceptual issues. For example, a way must be found to distinguish "war" crimes from "ordinary" crimes committed during an armed conflict. The law does so by requiring that the crime be linked to the conflict. La Haye argues that the relevant nexus is one between the act and the conflict rather than between the perpetrator and a warring party. She also asserts that victims of war crimes in internal armed conflicts need not be enemy nationals *vis-à-vis* the perpetrators.

In Chapter 4, La Haye traces the very notion of war criminality in internal armed conflicts to its sources. At the heart of her inquiry is the state of customary international law on the matter. She scrutinises the soundness of the *Tadić* Jurisdiction Decision in which the notion was declared to have passed into custom by the early 1990s. La Haye finds that the *Tadić* ruling was, in fact, "premature"<sup>3</sup> – although, in her view, subsequent developments do affirm the principle's customary status.

Chapter 5 deals with national war crimes prosecutions. The so-called "universal jurisdiction" takes the centre stage of this chapter.<sup>4</sup> Having found a dearth of relevant treaty

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<sup>2</sup> See *Prosecutor v. Tadić*, Case No. IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction (Oct. 2, 1995).

<sup>3</sup> Eve La Haye, *War Crimes in Internal Armed Conflicts* 171 (Cambridge Univ. Press 2008). Also, see *id.* at 381–382.

<sup>4</sup> For the purposes of her book, La Haye focuses on national criminal jurisdiction rather than national civil/tort jurisdiction such as that exercised by the United States pursuant to its federal Alien Torts Claims Act. See La Haye, *supra* note 3, at 299–300 n.242.

provisions, La Haye turns her attention to customary law on the existence of authorisation – or, in any event, the absence of prohibition – regarding third states prosecuting war crimes committed in internal armed conflicts. A survey of various materials, such as national legislation, the practice of international organisations, the jurisprudence of the International Court of Justice (ICJ) and domestic trial records, leaves the matter inconclusive. La Haye posits that the right to exercise universal jurisdiction is “in the process of progressive development” and “about to crystallise in customary international law.”<sup>5</sup> Towards the end of Chapter 5, however, her principled optimism is replaced by a disheartening concession that universal jurisdiction, while “not ... dead,”<sup>6</sup> now survives only in the courts of Germany and Spain.

Chapter 5 also considers war crimes prosecutions by war-torn states themselves. Here, La Haye’s observations closely echo the familiar themes of transitional justice. Local war crimes prosecutions are arguably preferable to those held in third states but depend critically on international support and the political will of the forum state.

In Chapter 6, La Haye reflects on the legacy and potential of international prosecutions. The ICTY and its sister tribunal for Rwanda (ICTR) have contributed significantly in this regard. Their accomplishments include the development of extensive jurisprudence on conflict classification, constitutive elements of war crimes, modes of liability and due process. The two *ad hoc* tribunals have also revealed their limitations, however. The ICTY’s jurisprudential “audacity”<sup>7</sup> exposes it to charges of non-compliance with *nullum crimen sine prævia lege*, a cardinal principle of general criminal law prohibiting retroactive criminalisation. Despite their Chapter VII status, both the ICTY and the ICTR have proved heavily reliant on co-operation with states on matters of evidence and custody. Their costly and lengthy proceedings, as well as the perception that their work has not engendered genuine reconciliation, also attract criticisms.

La Haye notes with concern the highly complex and restrictive jurisdictional set-up of the International Criminal Court (ICC). In her view, however, its early results have “proved the pessimists wrong.”<sup>8</sup> The court’s jurisdiction has already been triggered, on-going armed conflicts investigated and belligerent behaviour affected. La Haye concludes that the ICC has established its credibility in the new international order.

La Haye’s principal findings are mostly conservative. She specifically declines to find that the customary ban on certain weapons applies to internal armed conflicts.<sup>9</sup> La Haye doubts, *contra Tadić*, whether the notion of war criminality had really extended to internal conflicts by the early 1990s.<sup>10</sup> Nor is she prepared to affirm the existence of a customary right to exercise universal jurisdiction.<sup>11</sup> She merely acknowledges the assertion often made by

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<sup>5</sup> Id. at 255.

<sup>6</sup> Id. at 272.

<sup>7</sup> Id. at 171 and 381.

<sup>8</sup> Id. at 354.

<sup>9</sup> See id. at 69.

<sup>10</sup> See id. at 171.

<sup>11</sup> See id. at 255–256.

those involved in the drafting of the ICC Statute that its substantive criminal provisions reflect custom.<sup>12</sup> And La Haye stays clear of the popular notion that the ICC Statute itself embodies universal jurisdiction or that it authorises or obligates contracting parties to establish such jurisdiction.<sup>13</sup>

These are perhaps not the politically correct positions to take today. La Haye stands by them, however, if, as is the case in her book, they are the conclusions to which the relevant material leads her. Those seeking to see in La Haye another cheerleading commentator ready to find any and every do-good, feel-good and evil-busting customary rule will be disappointed.

La Haye leaves one aspect of conflict classification unaddressed. The *Tadić* Jurisdiction Decision defines an international armed conflict as "a resort to armed force between States"<sup>14</sup> and a non-international armed conflict as "protracted armed violence between governmental authorities and organised armed groups or between such groups within a State."<sup>15</sup> Problematically, this definition does not help us classify a conflict where one state engages a non-state entity on the territory of another state or where one non-state entity engages another non-state entity across international boundaries. Topical and fascinating though it is, however, tackling this issue is not integral to La Haye's theme.

This, of course, is not to say that La Haye's work is without difficulties. On the contrary, both her methodologies and substantive findings raise several questions.

Let us begin with the way in which La Haye treats sources of international law and some of their *indicia*. Under certain circumstances, the attitudes of states towards UN General Assembly resolutions may be indicative of their *opinio juris*.<sup>16</sup> One could also argue, as La Haye does,<sup>17</sup> that those states holding UN Security Council seats may accumulate their *opinio juris* through their votes.<sup>18</sup> But La Haye goes one step further; she states categorically that Security Council resolutions "reflect the practice of the UN and can provide evidence of the existence of custom"<sup>19</sup> and that "[s]uch consistent and general Security Council affirmation proves the definite application of such rules in internal armed conflicts and may imply the customary character of such principles."<sup>20</sup> Statements such as these appear to conflate the *opinio juris* of Security Council members, on the one hand, and the Security Council or its resolutions, on the other. Strictly speaking, it is the former, not the latter, that truly participates in the formation of custom. The phenomenon at issue here is different from one where an intergovernmental organisation may generate through practice administrative rules binding

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<sup>12</sup> See *id.* at 165, 172 and 339.

<sup>13</sup> See *id.* at 226–227 and 229–230.

<sup>14</sup> *Tadić* Jurisdiction Decision, *supra* note 3, at 70.

<sup>15</sup> *Id.*

<sup>16</sup> See La Haye, *supra* note 3, at 161 and 166 (quoting the ICJ's *Nicaragua* Judgement and *Nuclear Weapons* Advisory Opinion).

<sup>17</sup> See La Haye, *supra* note 3, at 63–64, 166–167 and 236–237.

<sup>18</sup> See Vaughan Lowe, *International Law* 92 (Oxford Univ. Press 2007) (discussing the accumulation of *opinio juris* around UN General Assembly resolutions).

<sup>19</sup> La Haye, *supra* note 3, at 63.

<sup>20</sup> *Id.* at 64.

on its members (e.g., budgets, decision-making procedures) or one where the Security Council may effectively "legislate" through binding Chapter VII resolutions.<sup>21</sup>

Military manuals are generally capable of embodying the practice and/or *opinio juris* of the states that issue them.<sup>22</sup> Not all enjoy the same capacity or weight, however.<sup>23</sup> Some of those cited by La Haye,<sup>24</sup> such as decrees and manuals issued by national authorities at the highest level, may indeed constitute the practice and/or *opinio juris* of their issuers. The same cannot necessarily be said of those designated merely as codes of conduct, instructor's manuals, commander's guides and the like. Their evidentiary value would depend on the nature and scope of authority they have in their respective national normative frameworks.

La Haye describes statements made by states during Security Council debates and diplomatic conferences as "unilateral declarations."<sup>25</sup> While such a description is indeed possible, the appropriate legal consequences would be that the states in question consider the content of their declarations to be binding upon themselves rather than upon the others.<sup>26</sup> It would appear that La Haye should have simply characterised the relevant statements as expressions of *opinio juris*. Nor would it be accurate to call the ICTY and ICTR Statutes "treaties"<sup>27</sup> or rulings of the ICJ and the Special Court for Sierra Leone "practice of judicial institutions"<sup>28</sup> (as if analogous to state practice for the purposes of ascertaining custom).

Fortunately, these methodological perplexities do not affect the main thrust of La Haye's otherwise guarded findings. Instead, they needlessly distract the reader from the substance and create an impression of sloppiness. This impression is regrettable and, frankly, surprising, as La Haye is evidently conversant in some sophisticated aspects of international legal theory.<sup>29</sup>

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<sup>21</sup> See, e.g., Paul C. Szasz, *The Security Council Starts Legislating*, 96 Am. J. Int'l L. 901-905 (2002); Ian Johnstone, *The Security Council as Legislature*, in *The UN Security Council and the Politics of International Authority* 80-104 (Bruce Croin & Ian Hurd eds, Rutledge 2008); Georges Abi-Saab, *The Security Council as Legislator and as Executive in its Fight Against Terrorism and Against Proliferation of Weapons of Mass Destruction: The Question of Legitimacy*, in *Legitimacy in International Law* 109-130 (Rüdiger Wolfrum & Volker Röben eds, Springer 2008).

<sup>22</sup> See La Haye, *supra* note 3, at 154 n.219 (quoting *Tadić* Jurisdiction Decision, *supra* note 3, at 99).

<sup>23</sup> See, e.g., Nobuo Hayashi, *Introduction*, in *National Military Manuals on the Law of Armed Conflict* 17, 19 and 33-35 (PRIO 2008); Charles Garraway, *Military Manuals, Operational Law and the Regulatory Framework of the Armed Forces*, in *id.* 50, 53-55; David Turns, *Military Manuals and the Customary Law of Armed Conflict*, in *id.* 64, 64-72.

<sup>24</sup> See La Haye, *supra* note 3, at 59-61 and 154-155.

<sup>25</sup> *Id.* at 161-164.

<sup>26</sup> See, e.g., Lowe, *supra* note 18, at 94.

<sup>27</sup> La Haye, *supra* note 3, at 134-137 and 225-226.

<sup>28</sup> *Id.* at 236-240. In fairness, La Haye also notes that judicial decisions may constitute "subsidiary means for the determination of rules of law" within the meaning of Article 38(1)(d) of the ICJ Statute. See La Haye, *supra* note 3, at 237 n.196.

<sup>29</sup> See, e.g., *id.* at 165 n.303 (referring to an article by Richard Baxter in which he first articulated the so-called "Baxter paradox" according to which determining the customary status of a widely ratified treaty depends paradoxically on the practice and *opinio juris* of the few states that have not ratified it).

La Haye's work also presents us with substantive problems. To begin with, her scattered references to deterrence are not helpful.<sup>30</sup> How is it that successful prosecutions in just three European states – i.e., Switzerland, France and Belgium – "serve as a deterrent and signal clearly to war criminals" that they may be prosecuted in a growing number of states,<sup>31</sup> when, as La Haye herself chronicles, these very states are busy curtailing their own jurisdictional reach? Elsewhere, she observes that the deterrent effect of the ICTY and the ICTR "cannot be underestimated."<sup>32</sup> This does not tally with her own admission that

[t]he two ad hoc tribunals have also failed to prevent the recurrence of war crimes in the same region. The ICTY did not deter potential offenders and did not manage to prevent the Srebrenica massacres or the events in Kosovo from 1998 to 2000.<sup>33</sup>

La Haye also portrays the changes in the behaviour of the Lord's Resistance Army (LRA) in 2006 as "compelling signs" that the ICC can act as a deterrent.<sup>34</sup> Whatever merit such a portrayal may have had at the time, the situation has since been superseded by the LRA's return to its familiar, brutal ways.<sup>35</sup>

While instances of successful deterrence may not spring easily to mind,<sup>36</sup> one need look no further than Darfur for instances of undeterred inhumanity. Neither the adoption of the ICC Statute in 1998, nor its entry into force in 2002, nor the referral by the UN Security Council in 2005, seems to have deterred the humanitarian crisis in Darfur which first erupted in 2003.

La Haye's discussion of universal jurisdiction is competent overall. She correctly distinguishes universality from territoriality, nationality/active personality, passive personality and the protective principle.<sup>37</sup> This distinction in turn guides her analysis of the material at hand. La Haye concludes that the right to exercise universal jurisdiction has not yet become custom. While not *per se* incorrect, La Haye's conclusions are unhelpfully vague. They would have attained greater precision and clarity had La Haye distinguished not only between different *titles* of jurisdiction but also between different *categories* of jurisdiction.<sup>38</sup> International law recognises three categories, namely: (i) jurisdiction to prescribe, (ii) jurisdiction to adjudicate

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<sup>30</sup> See La Haye, *supra* note 3, at 216, 318, 354, 358, 383 and 384.

<sup>31</sup> *Id.* at 383.

<sup>32</sup> *Id.* at 384.

<sup>33</sup> *Id.* at 338 (footnote omitted).

<sup>34</sup> *Id.* at 358.

<sup>35</sup> See, e.g., *Ugandan LRA 'in church massacre'*, BBC, Dec. 28, 2008, <http://news.bbc.co.uk/2/hi/africa/7802804.stm>; Xian Rice, *Nearly 200 killed as rebel militia raids villages in Congo*, Guardian, Dec. 29, 2008, <http://www.guardian.co.uk/world/2008/dec/29/uganda-lra-congo-kony>; *Christmas massacre 'killed 400'*, BBC, Dec. 30, 2008, <http://news.bbc.co.uk/2/hi/africa/7804470.stm>.

<sup>36</sup> To be sure, deterred crimes tend to go unreported or underreported precisely because they have been successfully deterred. This reviewer is indebted to Daryl Mundis for this point.

<sup>37</sup> See La Haye, *supra* note 3, at 218–219.

<sup>38</sup> See Restatement (Third) of the Foreign Relations Law of the United States Pt. IV (1986).

and (iii) jurisdiction to enforce.<sup>39</sup> At issue here is the applicability or otherwise of the universality principle *vis-à-vis* prescriptive and adjudicatory jurisdiction.

It seems eminently arguable that universality does customarily entitle a state to designate certain classes of conduct such as war crimes in internal armed conflicts, wherever and by or against whomever it is committed, as criminal under its own domestic law.<sup>40</sup> Of course, even if a state is vested with universal prescriptive jurisdiction in respect of certain conduct, it does not necessarily follow that the state is also vested with universal adjudicatory jurisdiction in respect of that conduct. La Haye finds that the relevant state practice typically requires the presence of the defendant on the territory of the forum state. Thus,

the right to extend universal jurisdiction over war crimes may not include the option for states to initiate investigations and issue arrest warrants if the suspected perpetrator is not present in their territory. Only a few states have implemented 'pure universal jurisdiction' so far and the general trend adopted by state practice seems to require at least the presence of the perpetrator in the territory before states may apply universal jurisdiction.<sup>41</sup>

Even where universal prescriptive jurisdiction exists over certain conduct, adjudicatory jurisdiction over that conduct is often tied to a variation of the territoriality principle.

This reviewer agrees that there is probably an insufficient amount of affirmative state practice for the proposition that universal adjudicatory jurisdiction has passed into custom. It would amount to exaggerating the insufficiency, however, if the practice of territorially restricting adjudicatory jurisdiction were held to exhibit the *opinio juris* that such a restriction is mandatory. After all, there is no indication that those states which have added the territoriality requirement have felt obligated to do so under international law. Rather, their decision appears to be based on political and practical considerations.

Issues surrounding *nullum crimen sine praevia lege* are perhaps the most under-explored area of La Haye's otherwise fairly comprehensive work. As noted earlier, La Haye concludes that the *Tadić* Jurisdiction Decision was "premature".<sup>42</sup> The obvious question that ensues is this: "has the [ICTY] violated the principle of legality by finding individuals guilty of war crimes committed in internal armed conflicts during the early 1990s?"<sup>43</sup> La Haye responds to this question in the affirmative.<sup>44</sup> But then, inexplicably, she veers away from the matter. "If," she declares, "the legal rigour of the *Tadić* finding can be put into question, morality was certainly calling for the international criminal responsibility for war crimes for serious violations of the laws of war committed in internal armed conflicts."<sup>45</sup> To this sudden appeal to morals,

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<sup>39</sup> See *id.* at § 401.

<sup>40</sup> See Restatement, *supra* note 38, § 404.

<sup>41</sup> La Haye, *supra* note 3, at 255–256 (footnote omitted). Also, see *id.* at 272.

<sup>42</sup> *Id.* at 171 and 381–382.

<sup>43</sup> *Id.* at 381.

<sup>44</sup> See *id.* at 382 (footnote omitted).

<sup>45</sup> See *id.*

La Haye adds that the principle of legality would be satisfied under the law of the former Yugoslav states and special agreements concluded between the warring parties.<sup>46</sup>

La Haye fails to tackle two problems that finding the *Tadić* Jurisdiction Decision in breach of *nullum crimen sine praevia lege* entails. First, does this mean that some of the convictions entered by the tribunal based on that decision may have been wrongful? Second, if, as La Haye says, the decision was the "main catalyst"<sup>47</sup> for the subsequent development of the law in this area – "[i]ronically, most of the subsequent practice highlighted in this work, such as the adoption of the ICC statute, the majority of national legislation and the unilateral statements by states, were made possible to a great extent only by virtue of the audacity of the ICTY Appeals Chamber in the *Tadić* case"<sup>48</sup> – would it not follow that those subsequent developments, drawing as they did almost exclusively on the veracity of an erroneous ruling, may be similarly erroneous?

One might reply that even an initial error could somehow be rectified if its content were (mis)taken to be correct with sufficient consistency and frequency thereafter; or, more plausibly, if independent bases for the content's correctness untainted by the initial error were found elsewhere. Neither line of argumentation is attempted by La Haye.

Responses of a somewhat different kind might also be considered. It has been suggested that *nullum crimen sine praevia lege* protects from retroactive criminal sanction only those who reasonably believed in the lawfulness of their conduct at the relevant time.<sup>49</sup> This is essentially a natural-law argument according to which deliberate wrongdoers should not be permitted to take advantage of formal limitations in the law. A utilitarian variant of the same idea would hold that, in extraordinary times such as the aftermath of World War II, substantive justice should trump strict legality.<sup>50</sup> A breach of non-retroactivity would be tolerated as the lesser of two evils, lest those responsible for gross inhumanity go unpunished.

Antonio Cassese, a former ICTY judge who presided over the *Tadić* Jurisdiction Decision, recently wrote that the ruling constituted an instance of interpretive adaptation (hence permissible), rather than that of retroactive application (hence impermissible), of criminal provisions.<sup>51</sup> According to one school of modern legal positivism, primary rules of obligation (e.g. "do not maltreat persons *hors de combat*") address themselves to individual duty-bearers, whereas secondary rules of adjudication (e.g. "those who maltreat persons *hors de combat* shall be punished as war criminals") address themselves to law-applying officials.<sup>52</sup> On this view, *nullum crimen sine praevia lege* would be satisfied (i) if the substantive prohibition

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<sup>46</sup> See *id.*

<sup>47</sup> *Id.* at 132.

<sup>48</sup> *Id.* at 171 and 381.

<sup>49</sup> See, e.g., Theodor Meron, *International Criminalisation of Internal Atrocities*, 89 Am. J. Int'l L. 554, 561 and 566 (1995).

<sup>50</sup> See, e.g., H.L.A. Hart, *Positivism and the Separation of Law and Morals*, 71 Harv. L. Rev. 593, 618–621 (1958); Antonio Cassese, *International Criminal Law* 36–41, 43 (2nd ed., Oxford Univ. Press 2008).

<sup>51</sup> See Cassese, *supra* note 50, at 44–47.

<sup>52</sup> See H.L.A. Hart, *The Concept of Law* 94–96 (Oxford Univ. Press 1961).



validly bound the individual when he committed its breach and (ii) if the criminal provision validly empowered the law-applying official to determine and punish that breach when he was seized of the case.<sup>53</sup> Now, in the 1990s, the notion that the substantive prohibitions underlying the criminal charges in *Tadić* applied to internal armed conflicts was not in doubt. Nor, in 1995, did the ICTY appeals judges doubt that they were authorised by law to try the defendants and, if found in breach of the said prohibitions, to punish them therefor.

Admittedly, these and numerous other possible solutions have their own shortcomings. But the fact that they do does not mean that La Haye should not explore some of them. On the contrary, it is appropriate, perhaps even imperative, that she do so. That the *Tadić* ruling was premature and in violation of the principle of legality is a serious and potentially explosive claim which can affect the legitimacy of much of the post-*Tadić* jurisprudential and institutional development regarding war crimes committed in internal armed conflicts.

The *Tadić* Jurisdiction Decision belongs to a league of judicial rulings that mark a paradigmatic shift in international law. The decision came at a mini-Nuremberg moment – “a quantum leap”<sup>54</sup> – when the law suddenly needed to retrofit existing rules for a qualitatively different world. Out went the old notion that war criminality was confined to armed conflicts between states; in came the new reality where the manner of fighting, the scale of atrocities and the suffering of victims made the distinction between rules applicable to international armed conflicts and those applicable to internal armed conflicts increasingly artificial and untenable.

The impact of that leap almost fifteen years ago is still felt today, as are the ramifications of its problems. Though not entirely free of difficulties, La Haye’s *War Crimes in Internal Armed Conflicts* ably documents the sometimes painfully chaotic process through which law and its institutions have evolved. As La Haye makes abundantly clear, the process is still ongoing and its success far from certain.

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<sup>53</sup> This reviewer is indebted to Rain Liivoja for this point.

<sup>54</sup> La Haye, *supra* note 3, at 2.