

Ronen Steinke. *The Politics of International Criminal Justice*. Oxford and Portland: Hart Publishing, 2012. Pp. 150. € 30. ISBN: 9781849463133.

Ten years ago, on 1 July 2002, the Rome Statute of the International Criminal Court entered into force. Germany had been one of the driving forces to facilitate the establishment of the ICC, and it remains a firm supporter. While France and Great Britain had been reluctant at first, Western Germany convinced all European partners in the mid-1990s of its vision of an independent ICC, not subjected to the control of the UN Security Council. And it fostered and promoted that European position, against fierce US opposition.

According to the – meanwhile hardened – politico-historical narrative, the clash between Europeans and Americans can be interpreted as a facet of the struggle between Mars and Venus: on one side, the realist and interest-oriented superpower; on the other side, the idealist Europeans, bound to an ideal of post-national cosmopolitanism. Germany's radical shift from a sceptical position towards international criminal law in the aftermath of the Nuremberg trials to a position of dedicated support manifests, or so the common narrative goes, a turn from old-fashioned power-oriented *Realpolitik* to an idealist 'legal cosmopolitanism' aiming at the comprehensive legalization of international politics.

But is that true? Ronen Steinke, a lawyer and political journalist, has carefully analysed the current German position and its formation. Steinke explicitly distances himself from a mainstream liberal perspective that explains Germany's politics of international criminal justice as an approach to international law inspired by values and enhanced by a feeling of 'historical duty'. Drawing on selected government documents and interviews with policymakers, the author presents an exploration of German interests and positions from a realist perspective. This realist perspective is often used to explain why the United States support the *ad hoc* tribunals for the former Yugoslavia and Ruanda, while they oppose the ICC. Germany's shift towards a 'cosmopolitan position', however, seems difficult to explain along realist lines, Steinke admits.

What is Germany's rational interest in a permanent institutionalization of international criminal justice, in an independent international criminal court? What can state actors expect from courts of international criminal justice? Why should a state support an international criminal court, financially and politically?

Of course, the establishment of courts of international justice is an expression of the – often merely symbolic – protest against a 'culture of impunity', combating impunity of perpetrators of crimes against humanity. Of greater interest and importance for the author is, however, a second function of international criminal justice: the reconstruction of historical events in a particular way, allowing for the establishment of 'historical truth', for the authoritative confirmation of a certain narrative of historical events. In that process, the prosecutor and her office play a key role. The selection of cases to be investigated and brought to trial determines the narratives to be established, the authoritative 'historical truth' of a conflict to be pronounced by the court. The prosecutor's margin of appreciation and her selection of cases prompt questions of accountability and control. The current discussion concerning the case selection of the ICC illustrates that here rests a core challenge to the legitimacy of any international criminal tribunal.

Steinke argues that the political interest of West Germany's elites in particular historical narratives played a decisive role in Germany's policy shift. He begins his analysis in 1949 with the founding of the democratic West German State that still exists today and describes the German objections to the Nuremberg trials – the harsh criticism of the International Military Tribunal that shaped German approaches to international criminal justice for decades. Even for the Freiburg criminal law professor Hans-Heinrich Jescheck, a lone supporter of a future permanent international criminal court, it was the avoidance of future 'victor's justice' that shaped his plea for the establishment of an independent universal criminal court – not a positive reception of Nuremberg. It was only after 1989 that the 'Nuremberg legacy' was embraced by the West German State, when the communist past was illuminated in the particular form of criminal trials, and GDR crimes were brought to court. Steinke emphasizes, 'After 40 years of political

rivalry with the communist East Germany, the West German government now had an interest in scoring a point in a struggle for interpretative authority over “historical truth”, and since the government had all the judicial means to ensure that this point would be made by courts in the desired form, it rapidly seized the chance, together with former GDR dissidents, to delegitimise the GDR regime in the forum of criminal justice.’

When the UN in 1993 and 1994 created the *ad hoc* tribunals for the former Yugoslavia and Ruanda, Germany became a firm supporter of the ICTY and paved the way to the first Hague proceedings by the arrest of the suspected Serb war criminal Duško Tadić. Steinke explains Germany’s support for the creation and establishment of the ICTY with its profound narrative interests *vis-à-vis* the Yugoslav conflict: its will subsequently to legitimize Germany’s position and role on the Balkans, and its allegedly ‘premature’ recognition of Croatia’s independence in December 1991.

Steinke emphasizes a remarkable conceptual shift in Germany’s position during the process of the creation of the ICC. While Germany, in the case of the *ad hoc* tribunals, advocated direct control by the UN Security Council and seemed to be at ease with the domination of the P5, the German government now began to argue – successfully – against such control and for complete judicial independence of the future World criminal court. The key role and impact of Germany at the PrepCom negotiations and the Rome Conference were undoubtedly a diplomatic masterpiece. Steinke illustrates how the German delegation, alongside Canada, reached out to numerous small states – and to NGOs, the ‘global civil society’ that was assembled all around and decisively influenced negotiations in Rome and New York. At the ICC, the influential role of handpicking the prosecutor and the judges is taken up by the Assembly of States Parties (ASP), where the system of ‘one country, one vote’ plays to the advantage of Germany and the other 26 EU Member States. As the largest EU Member State, Germany has considerable influence on the process. Through the backdoor of UN institutional architectures, the Rome Statue brought about a partial, yet significant democratic reform of decision-making procedures under the roof of the UN. An important policy field was shifted from the competence of the UN Security Council to the new forum of the ASP with its ruling principle ‘one country, one vote’.

Ronen Steinke argues that only the overlap between idealists and power politicians made possible the series of policy shifts illustrated in his book. Yet, more was needed. It took a carefully choreographed strategic interplay between realist policymakers and idealist legal scholars. That interplay was directed, with great sensitivity for specific political constellations, by an idealist actor who played the realist piano masterfully and at the same time conducted an entire diplomatic orchestra of diverse state delegations. The idealist actor, ever present between Steinke’s lines, is the German diplomat Hans-Peter Kaul, since 2003 a judge at the ICC. When Kaul, in 1996, took office as head of the Ministry of Foreign Affairs’ International Law Department, he assigned a higher priority to the ICC negotiations and the establishment of an International Criminal Court. The German PrepCom delegation, previously staffed by two officials, was enlarged to a group of seven delegates. Kaul invited a group of young, idealist international lawyers to join the delegation. How these liberal legal scholars developed the German strategy and led it, in cooperation with robust realist policymakers of the Kohl government, to a splendid success at Rome is the most intriguing story in a book which brings together and explores a variety of historical episodes.

This concise and extraordinarily dense investigation is a masterpiece. Steinke reports on and analyses a central chapter of German and European foreign policy after the end of the Cold War, in a manner that is both true to detail and strong in its arguments. This exploration tells us something about German foreign policy and politics of memory, about the relationship between law and politics in international relations, about the politics of international law between power and justice. And all this is fitted into 150 pages.

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