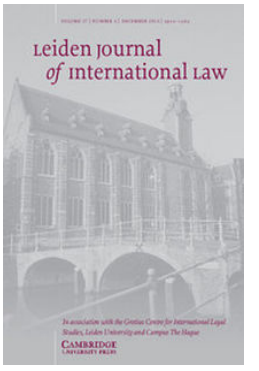

International Criminal Procedure – A Comparative Book Review

MARKO DIVAC ÖBERG

Leiden Journal of International Law / Volume 27 / Issue 04 / December 2014, pp 935 - 945
DOI: 10.1017/S0922156514000430, Published online: 06 November 2014

Link to this article: http://journals.cambridge.org/abstract_S0922156514000430

How to cite this article:
MARKO DIVAC ÖBERG (2014). International Criminal Procedure – A Comparative Book Review. Leiden Journal of International Law, 27, pp 935-945 doi:10.1017/S0922156514000430

Leiden Journal of International Law (2014), 27, pp. 935–945
 doi:10.1017/S0922156514000430

REVIEW ESSAY

International Criminal Procedure – A Comparative Book Review

MARKO DIVAC ÖBERG*

Gideon. Boas, James L. Bischoff, Natalie L. Reid, and B. Don Taylor III, *International Criminal Law Practitioner Library: Volume III: International Criminal Procedure*, Cambridge, Cambridge University Press, 2011, 486 pp., ISBN 9780521116305, £93.00 (hb), ISBN 9781107678491, £29.99 (pb).

Christoph Safferling (in co-operation with Lars Büngener, Hilde Farthofer, and Alena Hartwig), *International Criminal Procedure*, Oxford, Oxford University Press, 2012, 602 pp., ISBN 9780199562886, £99.00 (hb).

Goran Sluiter, Hakan Friman, Suzannah Linton, Salvatore Zappala, and Sergey Vasiliev (eds.), *International Criminal Procedure: Principles and Rules*, Oxford, Oxford University Press, 2013, ISBN 9780199658022, 1681 pp., £295.00 (hb).

Paul De Hert, Jean Flamme, Mathias Holvoet, and Olivia Struyven (eds.), *Code of International Criminal Law and Procedure, Annotated*, Brussels, Larcier, 2013, ISBN 9782804452384, 803 pp., €160,00 (hb).

1. Introduction

What a difference a good textbook would have made twenty years ago, when the first judges embarked upon the adventure of creating a new international criminal procedure. Of course, back then there was little to draw upon other than domestic criminal systems. Fast forward twenty years, and a series of international(ized) criminal tribunals and courts have created a rich and sprawling body of international criminal procedural law. So rich, in fact, that it threatens to overwhelm the practitioner or scholar struggling to make sure that he or she has not overlooked anything important. So the recent series of books devoted to the topic of international criminal procedure is welcome indeed. The present book review surveys and compares four of these volumes.[1]

* Legal Officer in Chambers at the ICTY. The opinions contained here are mine alone and do not necessarily correspond to those of the tribunal, or the United Nations in general [marko.divac.oberg@nyu.edu].

1 While Boas et al. was recently published in paperback, the hardback version is slightly older than the other three books under review.

At the outset, it is important to consider what goals they set for themselves. All of the books are intended for both scholars and practitioners (Boas et al., pp. 18, 474; De Hert et al., Preface by the Editors; Safferling, p. 3; Sluiter et al., p. 7). Safferling is meant as an introduction to international criminal procedure, and as such mainly has law students in mind. It also hopes to contribute to the exchange between academia and practice (pp. 3, 6). The primary goal of Boas et al. is to survey the most important rules of procedure at the international criminal tribunals, to show through examples how they operate in practice, and to provide criticism where warranted (pp. 18, 474). More ambitious, Sluiter et al. sets out as its chief objective to help improve international procedural practice and its ability to exert a positive influence on domestic and hybrid criminal procedure. To this end, the book seeks to 'distil a set of legal principles and rules constituting the normative core of international criminal procedure' (pp. 7–8). Finally, De Hert et al. is an article-by-article commentary of the Statutes of the International Criminal Court (ICC) and the International Criminal Tribunals for the Former Yugoslavia (ICTY) and Rwanda (ICTR), which 'provides readers with an initial source for urgent issues' regarding the interpretation of these articles (Preface by the Publishers).

As such, the scope of De Hert et al. is by definition limited to the ICC, ICTY, and ICTR. Boas et al. also focuses on these three courts and tribunals. However, the Special Court for Sierra Leone (SCSL) is also examined, and other courts and tribunals such as the Special Panels for Serious Crimes (SPSC) in East Timor and the Extraordinary Chambers in the Courts of Cambodia (ECCC) are occasionally mentioned (p. 19). Safferling focuses on the ICC, but also covers other courts or tribunals (pp. 1–2). It is not difficult to defend the choice to concentrate on the ICC, as the potentially global court of the future, or the ICTY and the ICTR, which have been the most prolific sources of practice in the field of international criminal procedure. Nevertheless, such justifications are no help to a reader who is looking for the position taken by other courts or tribunals on a given issue. Luckily, there is Sluiter et al., which for every topic systematically examines the law and practice of the International Military Tribunal at Nuremberg (IMT), International Military Tribunal for the Far East (IMTFE), ICTY, ICTR, SCSL, ICC, SPSC, ECCC, and Special Tribunal for Lebanon (STL) (pp. 15–17).[2]

It has become virtually impossible for a single author to examine comprehensively the vast body of international criminal procedural law and practice. At the turn of the last millennium, Safferling was still able to do it.[3] He now concedes that '[t]he speed at which international criminal procedure develops has increased at such a rate that it seems impossible for one person alone to cover the entire procedural process' (Preface). He has therefore recruited three additional authors – Lars Büngener, Hilde Farthofer and Alena Hartwig. Boas et al. also unites four authors – Gideon Boas, James L. Bischoff, Natalie L. Reid, and B. Don Taylor III. The monumental volumes by De Hert et al. and Sluiter et al. are each the fruit of the joint labour of more than

2 The Mechanism for International Criminal Tribunals was excluded because its Rules of Procedure and Evidence were adopted only after the bulk of the research was completed (p. 18).

3 C. J. M. Safferling, *Towards an International Criminal Procedure* (2001).

forty contributors. With the exception of Safferling, the authors of all these books reflect a mixture of academic and practical experience.

As for Safferling, 'none of the authors practices international criminal law' and they are all trained in the German legal tradition (p. 6). Both aspects become rather obvious when reading the book, which reflects Germanic legal philosophy and has a somewhat academic tilt. At times, this certainly works to the advantage of the book, as with the interesting and insightful treatment of the IMT (pp. 11–18). Other times, the results can be disorientating, for instance when it is argued that the German principle of 'immediate trial' is implicit in certain international norms, notably the right of the accused to confront the witnesses against him or her (pp. 416–9). This principle is not clearly defined in Safferling but it seems to refer to the German "unmittelbarkeitsprinzip", which is not a generally recognized concept in international criminal procedure.[4]

Where there are multiple authors, it inevitably becomes a challenge to maintain a certain consistency of structure, style, and quality of the content. All four books bear the marks of this, although to varying degrees. In Boas et al. it is hardly noticeable. Sluiter et al. has done a remarkable job of keeping it under control, despite its proliferation of authors. It has applied its methodology strictly to all chapters, with only minor variations. In other words, Sluiter et al. and Boas et al. iron out most of the problems usually associated with multiple authors, including variations in quality. As will be shown, De Hert et al. and Safferling bear more visible signs of the plurality of authors.

2. Theoretical framework, methodology, and topics covered

The books under review place different degrees of emphasis on establishing a theoretical framework. De Hert et al. does not contain any theoretical chapter, nor should it, considering that it is an annotated code. Boas et al. sets out to prove that international criminal procedure is a coherent and legitimate *sui generis* system. It covers some key theoretical issues: the sources of international criminal procedure, its legitimacy deriving from its roots in human rights, and the search for unity despite the diversity of international courts and tribunals and different domestic legal inspirations (pp. 1–17). Safferling makes similar points, and, in addition, covers the purposes of international criminal law in general and of international criminal procedure in particular, reflects upon the tensions between the nature of public international law and the logic of criminal law, and discusses legal methodology in international law – notably the rules of interpretation and the value of precedent (pp. 52–80, 109–27). At its best, Safferling makes salient theoretical points that are not included in any of the other books.

Overall, the strongest book from a theoretical point of view is nevertheless Sluiter et al., as it benefits from several excellent chapters by various well-chosen authors.

4 On this topic, see C. Schuon, *International Criminal Procedure* (2010), 44–6, 155; K. A. A. Khan et al., *Principles of Evidence in International Criminal Justice* (2010), 32.

Salvatore Zappalà very ably covers the adversarial and inquisitorial influences on international criminal procedure. Jens David Ohlin provides a well-written, sensible, and convincing chapter on the goals of international criminal justice. Frédéric Mégret also excels with a lucid, realistic, and succinct contribution on the sources of international criminal procedure. Finally, Lorenzo Gradoni's chapter on the human rights dimension of international criminal procedure is equally grounded in reality and generally persuasive, although perhaps longer than necessary (pp. 44–95).

Sluiter et al. also places by far the most emphasis on explaining its methodology. In essence, the approach taken in each chapter is to first canvass the law and practice of every international or internationalized criminal court or tribunal, and then to evaluate that from a series of perspectives: (a) human rights law, (b) comparative criminal procedure, (c) the goals of international criminal justice, and (d) coherence, expediency, and practical considerations. Next, the authors distil principles and general rules from what precedes and, finally, present recommendations for modifying the existing state of the law (pp. 8–36). This is an innovative and worthwhile approach. However, it could have been explained more succinctly. It would for instance have been preferable to set out concise definitions of key concepts in one place, instead of returning to them in different locations, using different wording (see pp. 11, 21–2, and 31–2).

Sluiter et al. is impressive in its ability to implement its methodology in a rigorous and systematic manner. Furthermore, as the editors rightly note, 'the standard layout makes the group's reasoning and findings transparent and verifiable' (p. 34). Inevitably, there is a flip side to the coin. At times, the methodology comes across as a 'straitjacket' (pp. xiv, 33–4) that may not have suited each individual topic under review. This is for instance the case with the chapter on the delineation and scope of the investigative phase and the chapter on the structure of uncontested trial (see pp. 210–1, 688). This does not mean that the methodology is bad in general, but rather that its results may be unexciting at times. For instance, the authors clearly, and understandably, faced a challenge when trying to identify any principles on legal issues marked by a sharp divide between the common law and civil law traditions (e.g. pp. 566, 742).

With regard to the specific topics of international criminal procedure covered in the books, De Hert et al. is markedly different from the rest. Being an article-by-article commentary of the ICC, ICTY, and ICTR Statutes, it is naturally limited in scope to any procedural issues that surface in the statutes themselves.[5] While the book includes the ICC Rules of Procedure and Evidence (RPE), Elements of Crimes, and Regulations, it provides hardly any commentary on these sources. Only a few rules are annotated, in the form of a cross-reference to annotations on articles of the ICC Statute (see pp. 547–50). Sometimes, it refers to nothing more than a repetition of the wording of the rule (see pp. 321, 548–9). In these circumstances, it would have been preferable to leave the text of these sources out altogether, considering how easily available up-to-date versions are on the internet. The other three books cover all the

5 De Hert et al. also includes issues of substantive law that are not covered by the present book review.

topics most relevant to international criminal procedure, although their structure and emphasis vary. In each of the three books a different but equally justifiable choice was made to omit a certain topic located on the outskirts of international criminal procedure. Boas et al. does not cover immunities (pp. 17–8), Sluiter et al. sets pre-trial management aside (p. 26, note 83), and Safferling excludes sentencing and the execution of penalties from its scope (p. 6).

3. User-friendliness and accessibility of information

Many pages are needed to cover all relevant topics, considering the rich procedural practice that has accumulated over time. The most economical of the books is Boas et al., which stops short of 500 pages. Sluiter et al. surpasses them all at nearly 1,700 pages. The vast majority of readers, certainly among practitioners, will not read these books from cover to cover. The value of the books is therefore largely determined by how user-friendly they are, which depends on the clarity of their language and structure, and the quality of their indexes, tables of contents, and tables of authorities.

With regard to tables of contents, De Hert et al. has a very simple and straightforward structure that will quickly take the reader to the relevant article of the relevant statute. It is far and above the most convenient book when the reader is interested in a question that is captured by an article of the ICC, ICTY, or ICTR Statute. Safferling offers a concise table of contents, which gives a good overview of what the book contains but is not helpful if the reader wants to find precisely where a specific topic is dealt with. The general table of contents in Sluiter et al. is a bit difficult to use, as it is more or less detailed depending on the chapter and does not include a number of topics that the book nevertheless touches upon (p. 25). It would have been preferable to follow the example set by Boas et al., in which the excellent table of contents at the outset of the book consistently includes all of the topics mentioned in the separate tables of contents found at the start of each chapter.

The index is often the weak point of textbooks, and these books are no exception. In keeping with its structure as a *code pénal*, De Hert et al. has no index at all. With an index that is only six pages long, Safferling falls short of providing a useful tool. For instance, a search for trials *in absentia* directs the reader to a section of the book that argues there is a general principle of international criminal procedure against trials proceeding in the absence of the accused, but omits mentioning that such trials are allowed at the STL (pp. 396–400).[6] The index fails to point the reader to other sections of the book that deal with the same topic and which do mention the exception at the STL (pp. 46, 323–4). The index of Boas et al. is better and twice as long, but still not comprehensive enough. Sluiter et al. has by far the richest index, covering more than sixty pages. However, I failed to find in any of the indexes several topics that are in fact covered in the books. For instance, all my attempts to use the indexes to look up discretionary judicial decisions were futile.

6 STL Statute, Art. 22.

A good table of authorities can be very helpful for a practitioner when considering how to interpret a certain authority, or whether to rely on it. De Hert et al. has no table of authorities, in keeping with its nature. In Safferling, the table of authorities is limited to cases, but is well structured and helpful. Boas et al. has an outstanding table of authorities, covering not only cases but also court and tribunal statutes, rules, codes, directives, regulations, other UN documents, international agreements, scholarly works, and a few national cases and laws. Sluiter et al. has a similarly well-made but more voluminous table of cases, in addition to a table of instruments that covers international agreements, documents issued by international organizations, national legislation and instruments, and a few soft-law instruments. Unlike Boas et al., it does not refer the reader to the pages where scholarly works are mentioned.

Once the reader has found what he or she is looking for, the value of a book will largely be determined by how well-referenced it is. In other words, are sufficient authorities provided, and are they pertinent and correct? De Hert et al. has opted for a format without footnotes. This makes it harder to read, as the eyes may need to skip references in the main text, and also discourages providing abundant references. Many annotations tend to rely on scholarly works rather than jurisprudential or other hard authorities.[7] For these reasons, the researcher or practitioner will likely need to consult other sources before finding what he or she is looking for. In general, the annotations of articles of the ICC Statute have rather few references to relevant non-ICC case law. Such references could have been helpful whenever there is no on-point ICC case law on a given topic. The quality of the referencing in Safferling is uneven. It also tends to rely rather heavily on German and US secondary sources, and is relatively light on specific references to statutes, RPEs, and jurisprudence. Sluiter et al. and Boas et al. are the best sourced of all the books, and as such they are the most valuable tools for a practitioner in search of a solution to a legal problem.

All four books are on the whole well-structured. De Hert et al. simply proceeds article by article through the ICC, ICTY, and ICTR Statutes. Within each annotation the clarity of the structure varies somewhat but is generally good. The main issue is a certain lack of co-ordination between different annotations on related topics, such as in the case of virtually identical provisions in the ICTY and ICTR Statutes. The overall structure of Safferling is rather clear, although it is sometimes confusing in the details, for instance when it discusses rules without citing their content. In Sluiter et al. the strict methodology leads to every chapter or section having the same structure. As such, it quickly becomes familiar and predictable to the reader. However, it is also rather repetitive when one reads an entire chapter from start to finish. Fortunately, it is easy to skip to the section containing the information that the reader is looking for.

With regard to language, Boas et al. is generally very clear, succinct, and well written. So is Sluiter et al., with the caveat that certain sections could have been shorter. De Hert et al. is for the most part notable for its wonderful succinctness. It

7 The best authorities from a practitioner's point of view are usually the founding instruments of the court or tribunal in question as well as judicial precedents, especially from its own appeals chamber. See ICC Statute, Art. 21; ICJ Statute, Art. 38.

is also generally quite clearly written. However, Safferling is of variable clarity and would have benefitted from being submitted to a hard-nosed native English-speaking editor. Safferling is aware of the issue, and extends the following plea: 'I sincerely hope that a native speaker will turn a blind eye to the many "Germanicisms"' (p. 6). The problem is that the linguistic issues sometimes hinder the understanding of the argument that the authors are trying to make. It is for instance unfortunate to use the expression 'double standard' when speaking of two different legal standards applicable to different situations (p. 138). Worse, occasionally the choice of words is problematic on a more substantive level. For instance, it is clearly wrong to say that the 'impeccability of forensic evidence is now a matter of common knowledge' (p. 484, fn. 547). No doubt the authors did not intend any of this, but it makes for difficult reading.

4. Strength of analysis

Most important, of course, is the substance of the books. Boas et al. is generally excellent – well reasoned, well balanced, and informed by the practical experience of the authors. One of its main strengths is providing pertinent cases to illustrate how a rule has been interpreted and applied in practice, which greatly contributes to making the book interesting and useful to the practitioner. See, for instance, the analysis of the ICTY Appeals Chamber's approach to reviewing factual findings of the Trial Chambers in the *Krstić* and *Kupreškić* cases (pp. 445–6). Of course, no single person is likely to agree with every position the authors have taken. Personally, I am not persuaded by their opposition to a plenary of ICTY judges amending the RPE to overrule judicial precedents (pp. 36–7). In my opinion, in the legal laboratory that is the ICTY it is good that a majority of the permanent judges have the power to overrule, for instance, an unfortunate binding precedent set by a narrow majority of three appeals judges.[8] Minor quibbles aside, Boas et al. provides top-notch analysis.

Despite the affirmation in De Hert et al. that the editors have always secured the neutrality and objectivity of the annotations (Preface by the Publishers), I found that some annotations written by certain authors or editors fell short of the otherwise excellent analysis found in the book. For instance, the annotation on Article 30 of the ICTY Statute, which concerns privileges and immunities, is limited to the immunity of defence counsel and does not come across as either neutral or compelling (pp. 729–34). That said, most of the annotations are good and suited in substance to the format of an article-by-article commentary. They focus on the essentials, in line with the goal of the book to provide 'an initial source for urgent issues'. Particularly helpful are the annotations that cover the drafting history of a given article, providing insights into the intent of the drafters and any previous versions of the article in case of amendments. Overall, De Hert et al. is a fine contribution to the literature in the field of international criminal procedure.

8 See *Prosecutor v. Aleksovski*, Judgement, Case No. IT-95–14/1-A, A.Ch., 24 March 2000, para. 113.

Safferling is not as strong. Analytically, it is uneven, ranging from very incisive to unpersuasive and even demonstrably wrong. For instance, it argues that the 'wording of Article 74 (3) ICCSt supposes that there are no signed dissenting views' attached to judgments (p. 527). This article of the ICC Statute (which the relevant section of the book did not quote) provides as follows: 'The judges shall attempt to achieve unanimity in their decision, failing which the decision shall be taken by a majority of the judges'. It is difficult to find in this any support for Safferling's interpretation, which furthermore is contradicted by the signed separate and dissenting opinions appended to the trial judgement in the *Lubanga* case,[9] issued after Safferling was written. The rather unsuccessful chapter on evidence illustrates the most problematic aspects of the book. It is often confusing, contains errors and is insufficiently researched. For instance, the author submits that

> [t]he *ad hoc* Tribunals have established a stringent approach, that is, the defence has no right to challenge a fact which is taken as judicially noticed and, therefore, "cannot be the subject of further evidence or dispute in the trial"' (p. 485).

This statement is incorrect on its face and is only footnoted to a single separate opinion of an SCSL judge, whose analysis was in fact limited to judicial notice of *facts of common knowledge*.[10] The chapter also appears to overlook Rule 92 *quater* of the ICTY RPE, on the admission into evidence of statements of unavailable witnesses (see pp. 402, 479), even though Safferling was published six years after the adoption of the rule. Such flaws are a pity considering how good the book is at its best, such as its succinct yet analytical overview of the ICTY (pp. 22–6), its concise, clear, and insightful examination of the constitution of appeals chambers (pp. 533–4), or its excellent take on what comparative criminal procedural law has to offer to international criminal procedure (p. 126).

Sluiter et al. is generally very well-argued, reasonable, pragmatic, and convincing. For instance, the examination of the ICTY Appeals Chamber's decision to order a re-trial in the *Haradinaj et al.* case is deeply insightful (pp. 779–80). As a rare exception, I think the authors overestimate the value and usefulness of the 'no case to answer' litigation in international criminal proceedings, or at least at the ICTY. It is described as 'a useful device to streamline the remainder of trial proceedings upon completion of the prosecution's case, thereby saving time and resources, and allowing the defence to concentrate its efforts only in relation to those charges which have been sufficiently substantiated' (p. 450). In reality, such litigation is very resource-consuming and rarely results in any significant reduction in the charges that the defence must face during its case.[11]

---

9 *Prosecutor v. Thomas Lubanga Dyilo*, Judgment Pursuant to Article 74 of the Statute, ICC- 01/04–01/06, T.Ch. I, 14 March 2012, Separate Opinion of Judge Adrian Fulford, Separate and Dissenting Opinion of Judge Odio Benito. See also Safferling's interpretation of Art. 74 (5) of the ICC Statute (p. 525).

10 *Prosecutor v. Sam Hinga Norman, Moinina Fofana and Allieu Kondewa*, Fofana - Decision on Appeal Against 'Decision on Prosecution's Motion for Judicial Notice and Admission of Evidence', Case No. SCSL-2004–14-AR73, A.Ch., 16 May 2005, Separate Opinion of Justice Robertson, para. 5.

11 See A. T. Cayley and A. Orenstein, 'Motion for Judgement of Acquittal in the Ad Hoc and Hybrid Tribunals – What Purpose If Any Does It Serve?', (2010) 8 *Journal of International Criminal Justice* 575. See further *Prosecutor v. Karadžić*, Case No. IT-95–5/18-T, T.Ch., 28 June 2012, pp. 28,764–28,770, 28,774 ('the Chamber partially

When finding commonalities between the normative frameworks of different international courts and tribunals, Sluiter et al. distinguishes between principles and general rules. Principles are understood as general and abstract legal prescriptions shared by all international courts and tribunals. They are seen as an essential part of a fair, viable, and coherent system of international criminal procedure. General rules are more specific and are accepted across various international courts and tribunals. They are not 'conclusive indicators of any strong and principled normative preference' (pp. 11, 21–2, 31–2). It is not obvious to the reader where the line is drawn between general rules and other rules. The authors identify a number of general rules which are only supported with reference to two international courts or tribunals. For instance, only ICTY and ICTR authorities support the 'general rule' that a decision may not be based exclusively on the testimony of a child who did not take an oath to speak the truth (p. 877). Inversely, a chamber's power to take judicial notice of adjudicated facts is not recognized as a general rule (pp. 1,124, 1,127–8), even though it exists at the ICTY, ICTR, STL, and SCSL.[12] Apart from the lack of clarity on this point, the authors have clearly put a lot of effort into identifying the pertinent principles and general rules.

As for the recommendations made by Sluiter et al., in the great majority of cases I found them to be wise, pragmatic, and convincing. For instance, the recommendations regarding the standard and burden of proof or the secrecy of judicial deliberations are insightful and thankfully much more nuanced than suggested in the Foreword (pp. xi, 1,149, 1,199). Generally speaking, the recommendations are informed by the practical experience of the authors, as illustrated by the following sensible suggestion:

> There should be rigorous training in statement-writing for all investigators and lawyers, for the prosecution and the defence, to ensure that the statement admitted at trial is true to the witness's own words, yet arranged logically and easy to follow. (p. 1083)

The pragmatic perspective does not however blind the authors to fundamental principles, as reflected in the commendable recommendation that an arrestee be entitled to trial within a reasonable time or to release pending trial, conditional on guarantees to appear for trial (p. 350). On occasion, the authors wisely refrained from making recommendations (pp. 168, 1,199).

There were only a few recommendations in Sluiter et al. that I found unconvincing. For instance, I have doubts about the idea that an appeals chamber must 'ensur[e] that any additional evidence that may make a conviction unsafe is allowed to be admitted' (p. 1,013). I think it would be all too easy for appellants to tender evidence 'that *may* make a conviction unsafe', leading to wrongful acquittals on

---

grants the accused's motion under Rule 98 *bis* of the Rules, enters a judgement of acquittal on Count 1 of the indictment, and dismisses the remainder of the motion'); *Prosecutor v. Karadžić*, Judgement, Case No. IT-95–5/18-AR98 *bis*.1, A.Ch., 11 July 2013, para. 117 ('**REVERSES** the Trial Chamber's acquittal of Radovan Karadžić for genocide in the Municipalities under Count 1 of the Indictment; and **REINSTATES** the charges against Radovan Karadžić under Count 1 of the Indictment').

12 ICTY RPE Art. 94(B); ICTR RPE Art. 94(B); SCSL RPE Art. 94(B); STL RPE Art. 160(B).

appeal.[13] I also have doubts about the following recommendation: 'Where there are several prior statements and transcripts relating to a witness, the tendering party should be required to combine those transcripts and statements into one amalgamated statement' (p. 1,082). It is difficult to do that without distorting the original transcripts and statements. Besides, it is likely that all the statements will anyhow end up in the trial record, so that the judges can weigh discrepancies between them.[14] I also fail to see the advantage of recommending that judges *shall* – rather than *may* – ask witnesses questions that they deem necessary to establish the truth (p. 654). In practice, it would make no difference, as the judges would continue to do what they 'deem necessary'. My views on these matters should not obscure the fact that the recommendations are on the whole excellent.

5. Conclusion

Do these books meet the goals that they set for themselves? Safferling goes some way towards providing an introduction to international criminal procedure and contributing to the exchange between academia and practice, but parts of the book risk confusing any reader who does not already have a solid grasp of the topic in question. I doubt that practitioners will find the book helpful. Despite some relatively minor shortcomings, De Hert et al. clearly meets its rather modest goal of providing an initial source for urgent issues regarding the interpretation of articles in the ICC, ICTY, and ICTR Statutes. However, in its effort to provide a slim and portable volume, the code uses a font size so small that I doubt many judges will be able to read it. Boas et al. brilliantly succeeds in its mission to survey the main rules of procedure, to show how they operate in practice, and to provide useful criticism. Having the greatest ambitions, Sluiter et al. also ran the greatest risk of falling short of fulfilling them. Yet its quest to distil the normative core of international criminal procedure is a resounding success. While it is too early to say whether this book will help improve the procedural practice of international courts and tribunals and enhance their influence on domestic and hybrid criminal procedure, its excellent recommendations certainly set the stage for succeeding in that area. In addition, Sluiter and his co-authors have created a very good and useful work of reference for practitioners and for anyone looking for the law in lesser known international criminal jurisdictions, carrying out comparative research across international and domestic jurisdictions, or seeking to understand the rationales or possible flaws of specific procedural rules.

---

13 Compare with the intricate legal regime governing the admission of additional evidence on appeal that has been developed by the *ad hoc* Tribunals. See e.g. *Prosecutor v. Šainović* et al., Decision on Sreten Lukić's Second Motion to Admit Additional Evidence on Appeal, Case No. IT-05–87-A, A.Ch., 29 April 2010, paras 5–11. See also *Prosecutor v. Kupreškić* et al., Decision on the Motions of Appellants Vlatko Kupreškić, Drago Josipović, Zoran Kupreškić and Mirjan Kupreškić to Admit Additional Evidence, Case No. IT-95–16-A, A.Ch., 26 February 2001, para. 15 ('the prohibition on a party from adducing evidence that was available to it at trial means that the party must put forward its best possible case at trial and cannot hold back evidence in reserve until the appeal.').

14 See, e.g., *Prosecutor v. Kupreškić* et al., Appeal Judgement, Case No. IT-95–16-A, A.Ch., 23 October 2001, para. 155 et seq.

Which of these books should one choose to get? The answer, of course, is that it depends on what one is looking for. Boas et al. is arguably the most consistently strong of the books under review, but it is also the oldest, covering developments up until 1 December 2009 (p. 20).[15] Five years is a lifetime in the young field of international criminal procedure, so there is much to be said for the outstanding Sluiter et al., which includes developments up to 14 March 2012 (p. 37) and covers the IMT, IMTFE, SPSC, ECCC, and STL much more comprehensively than any of the other books. De Hert et al. is the right choice for those looking for an international *code pénal*, and whose area of focus is the ICC, ICTY, or ICTR. It is undoubtedly the book to grab first when in urgent need of understanding a provision in the Statute of one of these three courts or tribunals. Funds permitting, all of these books will be welcome additions to the shelves of academics and practitioners. Unfortunately, Safferling, despite its strengths, falls short of the competition.

Looking to the future, I hope that Sluiter and his co-authors will continue to update their monumental work, not just because of its quality but also because its value will increase as the law and practice of the ICC matures.[16] Much the same can be said for De Hert et al., which in future editions should perhaps eventually abandon its commentary on the ICTY and ICTR Statutes, and focus instead on providing an exhaustive and well-co-ordinated commentary on the ICC Statute, RPEs, Elements of Crimes, and Regulations. Boas et al. has established itself as a classic in the field but its age is beginning to show. As such, I very much hope for future editions in which the often bare-bones sections on the law and practice of the ICC will become the backbone of the book.

15 Consequently, a number of statements made in the book are outdated, for instance the assertion that the ICTY has never granted an application for revision (p. 452). See *Prosecutor v. Šljivančanin*, Review Judgement, Case No. IT-95-13/1-R.1, A.Ch., 8 December 2010, para. 37.

16 See for instance the conclusion that a trial chamber's power to reconsider its own previous decisions 'cannot be considered to be a general principle as the situation is not yet clear at the ICC' (p. 1,009).