Internationalized Criminal Courts and Tribunals: Sierra Leone, East Timor, Kosovo, and Cambodia

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Oxford, Oxford University Press, 2004; 550 pp.

Historically, prosecution of international crimes has been the task of national courts; however, under international law prosecution by national courts presents two fundamental problems. First, national courts are often far from impartial, especially when they have to adjudicate on their own states' international crimes. Second, prosecuting international crimes can be politically and materially a burdensome exercise.

For this reason, Nuremberg and Tokyo military tribunals, established in the wake of the Second World War to prosecute German and Japanese crimes, broke new ground and presented us the first generation of international courts. It took several decades for the idea of international prosecution to find broad acceptance and until the United Nations Security Council brought about the second generation of international courts with the establishment of the *ad hoc* International Criminal Tribunal for the former Yugoslavia, the *ad hoc* International Criminal Tribunal for Rwanda, and the permanent International Criminal Court (ICC).

At the end of the twentieth century and the beginning of the twenty-first, a new generation of criminal justice bodies emerged

to prosecute suspects of international crimes. Designed to address the weaknesses of both international and domestic criminal courts, they combine national and international elements. Their bench consists of both international and national judges that can apply both international and national law. These features justify treating them together as «*internationalized*» criminal courts and tribunals (the adjective adopted by the editors as opposed to the adjectives «*hybrid*» or «*mixed*», which are sometimes used in literature). The book «Internationalized Criminal Courts and Tribunals: Sierra Leone, East Timor, Kosovo, and Cambodia» addresses three active and one anticipated jurisdiction of this kind: the Serious Crimes Panels in the District Court of Dili (East Timor); the 'Regulation 64' Panels in the courts of Kosovo; the Special Court for Sierra Leone; and the so-called Extraordinary Chambers in the Courts of Cambodia.

The book originates in a conference on internationalized criminal courts and tribunals held in Amsterdam in January 2002 and jointly organized by «*No Peace Without Justice*», the Pioneer Project on Interactions between National and International Law at the *Amsterdam Center on International Law,* University of Amsterdam, and the *Project on International Courts and Tribunals,* at New York University and University College, London.

The book consists of a set of twenty-one papers. Authors bring together academics from the fields of general international law and international criminal law as well as officials and practitioners with experience in the operation of internationalized criminal courts and tribunals. The book also contains a list of acronyms, table of cases, table of treaties, table of international instruments, tables of domestic laws, a more than selective bibliography, and a list of websites which make the work much easier for students and researchers.

The book is divided into Part I: Introduction; Part II: Internationalized Criminal Courts and Tribunals which analyzed the cases of Kosovo, East Timor, Sierra Leone and Cambodia; Part III: Cross-Cutting Aspects which is divided into Institution Building, Law and Procedure and Relationship with Third Entities: National Courts, Third States, and the ICC; and ends with a paper in the manner of conclusions entitled «Internationalized Courts: Better Than Nothing...».

In the first chapter, Antonio Cassese develops the role of internationalized courts and tribunals in the fight against international criminality, by way of introduction. In it, he compares and analyses national criminal courts, international criminal courts, *ad hoc* international tribunals for the former Yugoslavia and Rwanda and mixed or internationalized criminal courts. He also analyzes the main practical and legal problems that internationalized courts may have encountered. Subsequently, he argues that the relevant situations for internationalized courts could be considered. Finally, he explains why the establishment of future *ad hoc* similar tribunals is not an option and why internationalized courts constitute a valuable option or alternative when neither national courts nor the International Criminal Court (ICC) are an option.

The second chapter is entitled The Second Generation UN-Based Tribunals: A Diversity of Mixed Jurisdictions. In this paper, Daphna Shraga studies the main concepts of international jurisdiction and deals with the negotiation of the legal framework for the Extraordinary Chambers and Special Court, and subsequently with subject matter jurisdiction, personal jurisdiction particularly the prosecution of juveniles between 15 and 18 years old and peacekeepers, and temporal jurisdiction. Further on, she refers to the organizational structure of the internationalized courts and their relationship between the law of mixed tribunals and the law of the host country, especially in the case of amnesty or pardon. Shraga concludes that various of jurisdictions are required to focus the discussion, from the search for a model jurisdiction to setting the benchmarks for the establishment of a mixed jurisdiction.

In the third chapter, John Cerone and Clive Baldwin explain and evaluate, the United Nations Interim Administration Mission in Kosovo (UNMIK) Court System. In their evaluation, they deal with the problems posed by the lack of regulations specifying the role to be played by international judges and prosecutors. They explain the potential benefits of introducing international staff into the justice system: improving the degree and appearance of impartiality, independence, and, most important, bringing international skills and knowledge into the justice system. A similar topic is developed by Jean-Christian Cady and Nicholas Booth in the following chapter entitled Internationalized Courts in Kosovo: A UNMIK Perspective. These authors assume that we have some-

thing to learn from the experience of internationalized judiciary in Kosovo. They conclude that UNMIK was essential to re-establish the rule of law in a society destabilized by ethnic violence or organized crime and that an internationalized court was a better solution than creating a separate jurisdiction. They also it mention the importance of the presence of international police and of the deployment of international judges and prosecutors to supplement direct capacity-building of local judges and prosecutors, who constitute the majority of the judiciary.

Chapters five and six deal with East Timor. Sylvia de Bertodano wrote «East Timor: Trials and Tribulations». De Bertodano divides her work into two parts. The first part deals with Special Panels for Serious Crimes established in Dili, responsible for the investigation and prosecution of crimes against humanity which met with some successes, since 273 alleged perpetrators were charged. Even so, the system suffers from several serious problems; the most significant of which are the lack of cooperation with Indonesia; political considerations affecting prosecutions; financial and administrative difficulties; and uncertainty in implementing the law. The second part deals with the Jakarta Trials, which did not bring any real measure of justice regarding the atrocities in East Timor in 1999. Interesting contributions of the author are the lessons to be learned from the failure of the East Timor internationalized court experience. In the following chapter, Beth S. Lyon analyzes the Commission for Reception, Truth and Reconciliation (CAVR) in East Timor, which co-exists with criminal trials by the Serious Crimes Panels and Human Rights Court in Jakarta. Lyon first develops the origin, objectives, mandate, and composition of CAVR and goes on to explain that her work consisted in the practice and the obstacles in finding the truth and their relationship to the formal justice system.

The next three chapters refer to Sierra Leone. In the seventh chapter, Alison Smith develops the intersection of law, policy and practice in the Special Court of Sierra Leone. Smith carries out a more theoretical than practical analysis of beneficiaries both within and outside Sierra Leone, and then refers to personal aspects of the Special Court. Phakiso Mochochoko and Giorgia Tortora, in chapter eight, deal with the creation of the Management Committee for the Special Court for Sierra Leone, the role that it plays

and the future challenges it will face. The authors explain why the Management Committee, which involved the direct participation of United Nations representatives with the government of Sierra Leone, is one of the most innovative aspects of the Special Court's operation and how it could become a model for future similar institutions. William A. Schabas wrote Internationalized Courts and Their Relationship with Alternative Accountability Mechanisms: «The Case of Sierra Leone» (chapter nine). The author carries out an in-depth analysis of the «relationship» between the Truth and Reconciliation Commission (TRC) and the Sierra Leone Special Court, and concludes that they can work very comfortably together, without conflict or tensions and, most importantly, that the two will provide a forum for victims and, to a certain extent, offer them recognition, redress, and a sense that justice has been done.

Chapters ten and eleven focus on Cambodia. Craig Etcheson examines, in chapter ten, the politics of genocide justice in Cambodia regarding crimes committed by the Khmer Rouge between 1975 and 1979. The question is especially sensitive if we consider that family members every individual in the country of were murdered during the days of Democratic Kampuchea and none of the Khmer Rouge leadership have been prosecuted. Etcheson displays all the different Cambodian political players and regional, global, supranational and transnational actors who played an active role in the discussion of the genocide justice in Cambodia. In the following chapter, Ernestine E. Meijer develops the concept of jurisdiction (including amnesty), organization and procedure of the Extraordinary Chambers in the Courts of Cambodia for the prosecution of crimes committed by the Khmer Rouge regime. Meijer devotes a special part of the paper to explaining how to settle disputes between the UN and the Cambodian government regarding the functioning of the Extraordinary Chambers. The author points out in conclusion that, even efforts of the Extraordinary Chambers in the Courts of Cambodia responsible for the genocide in Cambodia are getting away with impunity and complicity in one of the greatest mass murders of the twentieth century.

The following nine chapters constitute the third part of the book, and cut across aspects of all four internationalized tribunals.

In chapter twelve, Cesare P.R. Romano, presents us with «The

judges and prosecutors of internationalized criminal courts and tribunals». In his article, Romano places particular emphasis in the implications of working with a mixed staff (national and international judges) and the special characteristics they must have to be part of internationalized court (e.g. nationality, moral integrity, command of languages, edge, gender, expertise, and economic and social outlook). He also explains the policy for recruiting personnel and its direct impact in the quality of each tribunal and in the importance of the independence of the judiciary

The financing of internationalized criminal courts and tribunals is the topic developed by Thordis Ingadottir. The author explains the financial framework of international (ICTY, ICTR, and ICC) and internationalized criminal bodies and the importance of having adequate funding, obtained through assessed or voluntary contributions, to ensure the appropriate independence of a judiciary. Ingadottir also explains why even the idea of a weaker and less expensive international criminal justice is attractive in a period of overall economic austerity, and that it is almost impossible for these courts in countries with very weak national systems.

In chapter fourteen, Bert Swart, refers to the application of substantive criminal law in the internationalized courts, with an emphasis on East Timor, Sierra Leone and Cambodia, and less extensive in the case of Kosovo panels. After a concise discussion of the purpose of internationalized courts, Swart examines jurisdiction and applicable substantive law issues in these tribunals. He also discusses international crimes, crimes under domestic law and general principles of criminal law (especially *nullum crimen sine lege*, juveniles, statutes of limitations and amnesties and pardons).

In chapter fifteen, Håkan Friman writes about criminal procedures applied by international courts in Kosovo, East Timor, Sierra Leone and Cambodia. An important contribution of this paper is that it gives us a human rights lawyer's point of view, focusing on a comparison between certain procedural features and fundamental international human rights standards for a fair criminal process, as set primarily in the 1966 International Covenant on Civil and Political Rights (ICCPR), as well as standards relating to juveniles, victims, and witnesses.

Jann K. Kleffner and André Nollkaemper, in chapter sixteen,

ponder about the relationship between internationalized tribunals and national courts. In their analysis, the authors determine that differences in procedures, jurisdiction and authority, defy generalizations. The dominant topic in the paper is that internationalized tribunals have been largely separated and isolated from national courts. The authority of national courts to review the legality of establishing internationalized courts or reviewing decisions of national courts is at best limited. The most important aspect of interaction between internationalized tribunals and national courts could be the influence that decisions of the internationalized courts have on the practice of national courts.

In the following chapter Göran Sluiter deals with legal assistance to internationalized criminal courts and tribunals. Sluiter sets forth that these courts and tribunals require legal assistance in order to accomplish their purposes, not only by the authorities of the states where these institutions operate, but also by third states and international organizations. Internationalized criminal courts need external cooperation to carry out several vital activities, such as collection of evidence, cooperation in investigations, arrest of accused persons, extradition, etc. Subsequently, the author refers to legal assistance provided in Kosovo, East Timor, Sierra Leone and Cambodia

In chapter eighteen, Markus Benzing and Morten Bergsmo offer tentative remarks on the relationship between internationalized criminal jurisdictions and the International Criminal Court, from the viewpoint of policy, law, and of practical aspects. The tries try to answer questions concerning the relationship between the ICC's and some possible future International Criminal Tribunal in connection with the efficacy, viability or independence of such jurisdictions, the impact of internationalized courts that could affect the ICC's aim of being a permanent, universal institution, possible future cooperation among institutions, and the connection with the complementary regime of the ICC. In the following chapter, Maria Carmen Colitti presents us with another complementary analysis of the International Criminal Court, and its geographical and jurisdictional reach. Colitti infers that the legal regime created by the Rome Statute is not all-inclusive. The ICC limits jurisdiction *ratione materia* and ratione *temporis* (e.g. non-retroactive jurisdiction). Which could give rise to internationalized criminal bodies; on

the other hand, internationalized tribunals could benefit from the Rome Statute, since it provides an excellent model law.

In chapter twenty, Luigi Condorelli and Théo Boutruche try to answer whether Internationalized Criminal Courts and Tribunals are necessary. According to the authors, it is time to revise the negative and positive of such an evolution implications for the legal order. This analysis points to the common features of these apparently so different internationalized tribunals. It is worth underlining that the authors conclude that if the ICC could develop its work and have jurisdiction not only over geographic area but also over perpetrators of future crimes, it will not be necessary other *ad hoc* or internationalized tribunals, a conclusion that seems to differ from that of other authors in the book.

Finally, Alain Pellet, presents some views on the general topics of the conference on internationalized criminal courts and tribunals held in Amsterdam in January 2002.

In summary, this book, the second to be published by the Oxford University Press/PICT international courts and tribunals series, contains an updated assortment of twenty-one papers emanating from a conference held in Amsterdam in January 2002. The book provides an in-depth analysis of the various approaches and procedures of the courts and an evaluation of their wider impact on the development of international criminal law and practice. Given the nature of the studies, probably the only criticism that could be made is the unnecessary recurrence of some analyses. Nevertheless, contributions made by this book are enormous and it will be highly useful for students of international law and international criminal law and for practitioners working with, or in, the international courts and tribunals, for staff of international governmental and non-governmental organizations.

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