

Book Review of Internationalized Criminal Courts: Sierra Leone, East Timor, Kosovo and Cambodia

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Internationalized Criminal Courts: Sierra Leone, East Timor, Kosovo and Cambodia. By Cesare P. R. Romano, André Nollkaemper, and Jann K. Kleffner (Eds.). Oxford: Oxford University Press, 2004. pp. Lviii, 491. ISBN: 0199276730 0199276749

At the end of the twentieth century and the beginning of the twenty-first century, a new generation of internationalized criminal justice bodies emerged to prosecute suspects of international crimes such as genocide, crimes against humanity and war crimes. Designed to address the weaknesses of both international and domestic criminal courts, these courts combine national and international elements. Their bench consists of both international and national judges and they can apply both international and national law. This book is an edited and updated collection of papers from a conference held in Amsterdam in January 2002. The conference was jointly convened by No Peace Without Justice, the Amsterdam center on International law and the project on International courts and tribunals.

Internationalized criminal courts addresses a wide range of legal and policy issues arising out of the creation and operation of the so-called 'internationalized' criminal courts and tribunals-tribunals established and operated with a degree of participation of the international community-and analyses the place of such tribunals in the international criminal justice system. This book addresses three active and one putative 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. These four bodies are the subject of this book, and are grouped together here under the label 'internationalized criminal courts and tribunals'. At times, these four bodies have also been dubbed 'hybrid' or 'mixed' courts and tribunals. However, it is the opinion of the editors of this book that the adjective 'internationalized' more adequately describes the nature of these bodies, while the other

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designations sometimes employed in literature fail to do so. It is the participation of the international community in the creation and management of these bodies that make them an intriguing object of study for the international legal scholar. The adjectives 'hybrid' or 'mixed' fail to highlight the role played by the international community.

Contributions from scholars of international law and international criminal law, and from practitioners working in these courts provide in-depth analysis of the differing approaches and procedures of the courts, and evaluation of their wider impact on the development of international criminal law and practice. Those contributors identify common challenges facing such tribunals. These include legal and policy issues, such as relations with other domestic and international course, and with third states, and questions of applicable substantive and procedural law, as well as more practical operational issues, such as resource limitations and the complexities of integrating national and international elements into a functioning tribunal. However, the book also reveals and explores the heterogeneity among the existing and planned internationalized criminal tribunals, and the flexibility inherent in the broad concept of 'internationalized' tribunals.

This book consists of three parts. Part one is divided into two chapters. Chapter one deals with the role of internationalized courts and tribunals in the fight against international criminality, by *Antonio Cassese*. Chapter two deals with the second generation UN-Based tribunals: A Diversity of mixed jurisdictions, by *Daphna Shraga*. Part two focuses on Internationalized Criminal Courts and tribunals. This part is divided into (3-11) chapters. Chapter three deals with explaining and evaluation the UNMIK court system, by *John Cerone and Clive Baldwin*. Chapter four addresses Internationalized courts in Kosovo; An UNMIK perspective, by *Jean-Christian Cady and Nicholas Booth*. Chapter five deals with East timor: trials and tribulations. Chapter six focuses on Getting untrapped, Struggling for truths: the Commission for Reception, truth and Reconciliation (CAVR) in East timor, by *Beth S Lyons*. In chapter seven, *Alison Smith* deals with Sierra Leone: the Intersection of law, policy, and practice. *Phakiso Mochochoko and Giorgia tortora* in chapter eight deals with the management for the special court for Sierra Leone. Chapter nine focuses on Internationalized courts and their relationship with alternative accountability mechanisms: the case of Sierra Leone, by *William A. Schabas*. *Craig Etcheson* in chapter ten examines the politics of Genocide justice in Cambodia. Chapter eleven addresses the extraordinary

chambers in the courts of Cambodia for prosecuting crimes committed by the Khmer Rouge: jurisdiction, organization, and procedure of an internationalized national tribunal, by *Ernestine E. Meijer*.

Part three of this book addresses Cross-cutting aspects, and it is divided into (12-21) chapters. Chapter twelfth deals with the judges and prosecutors of Internationalized criminal courts and tribunals, by *Cesare PR Romano*. *Thordis Ingadottir* in chapter thirteenth focuses on the financing of Internationalized criminal courts and tribunals. In chapter fourteenth, Bert Swart examines the substantive criminal law applicable in the internationalized courts created in East timor and Sierra Leone as well as the internationalized court envisaged for Cambodia. Also this chapter examines the jurisdiction and the applicable substantive law issues in these courts. Crimes under general international law, other international crimes, crimes under domestic law, and general principles of criminal law will be discussed subsequently. *Hakan Friman*, in chapter fifteenth, discusses the criminal procedures applied by internationalized courts in Kosovo, East timor, Sierra Leone, and Combodia. Chapter sixteenth addresses the relationship between internationalized courts and National courts, *Jann K. Kleffner and Andre Nollkaemper* in this chapter examine six questions that have arisen or that may arise pertaining to the relationship between internationalized courts and national courts: (1) whether national courts have jurisdiction over acts that are within the jurisdiction of an internationalized courts; (2) if so, what rules govern concurrent jurisdiction between national and internationalized courts; (3) whether individuals can resort to a national court to challenge the legality of establishment of an internationalized court. (4) whether national courts can review judgments of an internationalized court; (5) whether suspects that have been tried in an internationalized court could later also be tried in a national court or vice versa; and (6) the authority of judgments of internationalized courts for national courts.

Göran Sluiter, in chapter seventeenth, discusses the legal assistance to internationalized criminal courts and tribunals. Since internationalized tribunals and courts lack enforcement powers of their own, they need external cooperation to carry out several vital activities, in particular the collection of evidence and the arrest of accused persons. Markus Benzing and Morten Bergsmo, in chapter eighteenth, identify preliminary issues and possible difficulties in the relationship between the international criminal court and internationalized criminal jurisdictions, from a viewpoint of policy, law and practical aspects. Questions

concerning the relationship between the international criminal court and such possible future courts could arise in connection with (a) an assessment of efficacy, viability or independence of such jurisdictions; (b) a consideration of how multiple hybrid tribunals could affect the international criminal court's aspiration to be a permanent, universal institution; (c) possible future cooperation between the international criminal court and such jurisdictions; and (d) in connection with the complementarily regime of international criminal court. In chapter nineteenth, *Mariacarmen Colitti* deals with Geographical and jurisdictional reach of international criminal court: Gaps in the international criminal justice system and a role for internationalized bodies. Once the international criminal court becomes operational, will there still be a need for internationalized courts and tribunals to try the most horrendous crimes? A survey of the range of the international criminal court's jurisdiction is necessary to determine to what extent and in which instances internationalized criminal bodies might help fill the interstices.

Luigi Condorelli and Theo Boutruche, in chapter twentieth, are responding to the following question, Internationalized criminal courts and tribunals are they necessary? Considering the issues highlighted in this volume, it is obvious that this is not simply a theoretical and controversial question. In fact, answering this question will shed some light on the prospects of this new kind of court: is it a model to be reproduced or instead a development of little use in the present international judicial system? In order to answer the question, the authors then need to point out the common features among these creatures that appear so different.

This first step toward a systematization of the phenomenon is crucial to understand whether these internationalized tribunals are necessary. However, in order to draw a complete picture of the internationalized criminal tribunals as a tool for the international legal system, the authors will also have to say something about the particularity of each of them. Finally, the question of the future of the internationalized courts is closely linked to their relationship with the international criminal court. Are they complementary or in competition? The last chapter is written by Alain Pellet. The address of this chapter is internationalized courts: Better than nothing ... Alain Pellet said that "*I am not sure that I am in 100 per cent agreement with Antonio Cassese, Luigi Condorelli and Théo Boutruche since, in particular, I am probably less persuaded than they are the internationalized courts are globally to be praised*".

The different chapters of this book have shown the complexity and the importance of the questions raised by the internationalized criminal tribunals. As the international community continues to struggle with issues of post-conflict justice, the editors and the contributors to this book have provided a detailed and timely critical assessment of the concept of the internationalized criminal courts and tribunals, and the potential role and limitations of such courts and tribunals in contributing to justice and reconciliation.