

## THE LEGACY OF AD HOC TRIBUNALS IN INTERNATIONAL CRIMINAL LAW

In the post-Nuremberg era, two of the most important developments in international criminal law are the International Criminal Tribunal for Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR). Created through UN Security Council resolutions, with specific mandates to prosecute those responsible for serious violations of international humanitarian law, the ICTY and the ICTR played crucial roles in the development of international criminal law. Through a series of chapters written by leading authorities in the field, *The Legacy of Ad Hoc Tribunals in International Criminal Law* addresses the history of the ICTY and the ICTR and the important aspects of the tribunals' accomplishments. From examining the groundwork laid by the ICTY and the ICTR for greater international attention to crimes against humanity to the establishment of the International Criminal Court, this volume provides a comprehensive overview of the impact and lasting roles of these tribunals.

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Edited by Milena Sterio , Michael Scharf  
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# The Legacy of Ad Hoc Tribunals in International Criminal Law

ASSESSING THE ICTY'S AND THE ICTR'S MOST  
SIGNIFICANT LEGAL ACCOMPLISHMENTS

*Edited by*

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Before joining the Temple faculty, Professor deGuzman was an Adjunct Professor at Georgetown University, where she taught graduate courses in international human rights law. She also clerked on the Ninth Circuit Court of Appeals and practiced law in San Francisco for six years, specializing in criminal defense. Professor deGuzman also served as a legal advisor to the Senegal delegation at the Rome Conference where the ICC was created and as a law clerk in the Office of the Prosecutor of the International Criminal Tribunal for Former Yugoslavia. She was a Fulbright Scholar in Darou N'diar, Senegal.

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Professor Dutton's research interests include international criminal law, international human rights law, and maritime piracy. She has published her research in a variety of law reviews. In 2013, she published her book entitled *Rules, Politics, and the International Criminal Court: Committing to the Court*. In 2011, Professor Dutton was a fellow in Columbia Law School's Careers in Law Teaching Program.

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Professor Gordon co-wrote the US Supreme Court amicus brief on Holocaust and Darfur Genocide survivors in the case of *Yousuf v. Samantar*. He also represented the International League for Human Rights at the International Criminal Court Conference in Kampala, Uganda. He serves as a consultant for the International Nuremberg Principles Academy and is an adviser on hate speech issues for the Sentinel Project on Genocide Prevention’s Advisory Council. Professor Gordon is also on the Council of Advisors for the Global Institute for the Prevention of Aggression.

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## Foreword

*by Richard J. Goldstone*

Founding Chief Prosecutor of the ICTY and the ICTR

The first half of the 1990s was a period of wide support for international law and international courts, both criminal and civil. In May of 1993, the United Nations International Criminal Tribunal for the former Yugoslavia (ICTY) was established as a minimal response from the United Nations Security Council to the egregious war crimes and crimes against humanity that were being committed in the former Yugoslavia. The United Nations International Criminal Tribunal for Rwanda (ICTR) and hybrid tribunals followed and ultimately, in the middle of 1998, the Rome Statute for the International Criminal Court (ICC). In 1994, the United Nations Convention on the Law of the Sea came into operation and established the International Tribunal for the Law of the Sea. In 1995, the World Trade Organization established its Appellate Body as a court of final instance to entertain appeals from reports issued by panels in disputes between WTO members.

The ICTY enjoyed the fullest support from the United States and received its crucial economic and political assistance. That support continued when the Security Council, in 1994, established the ICTR. Significantly, the United States did not object when the ICTY's exercise of jurisdiction included Kosovo at a time, during 1999, when NATO forces, under the leadership of the United States, used military force against the Serb Army of Slobodan Milosevic in order to protect the Albanian population.

The support for international law and international courts during the 1990s did not continue. With regard to the ICC, in 2001 the United States, among other measures, "unsigned" the Rome Statute. In more recent times that Court has been under relentless attack by the African Union and increasingly criticized by governments that were among its traditional supporters. That change is particularly apparent with regard to my own country, South Africa, where a withdrawal from the Rome Statute remains an open question. In recent months there have been attacks on the WTO by the Trump Administration, which is preventing vacancies on the Appellate Body from being filled. China, India, Russia, and the United States continue to remain outside the ICC. The United States remains the only large nation that has failed to ratify the United Nations Convention on the Law of the Sea.

It is in that context that this book could not be more timely. It contains an impressive analysis of the legacy of the ICTY and ICTR. While no one can expect

a perfect record from any human endeavor, the fourteen chapters provide an exhaustive and careful analysis of just about every aspect of the work of the ad hoc tribunals. They include the important development and recognition of gender-related crimes, superior responsibility, fair trial standards, incitement as a war crime, and rules of evidence and procedure. There is an impressive analysis of the jurisprudence of the ad hoc tribunals and its contribution to the advance of international criminal law. There is an evaluation of the roles the ad hoc tribunals played in the target countries and, at the same time, recognition that in the area of reconciliation the tribunals appear to have enjoyed little success.

There are many allusions to the relationship between politics and the work and legacy of the ad hoc tribunals. This includes the political platform that the ICTY inadvertently gave to Milosevic and Seselj, who insisted on self-representation, and the problems that disruptive defendants create for the presiding judges. Other chapters consider sentencing issues and the difficulties they present for courts that have to consider massive crimes that frequently include thousands of victims.

There are legitimate and helpful criticisms of aspects of the work of the tribunals. They include the inaccessibility and undue length of many of the judgments and inadequacy of the steps taken, to ameliorate the unavoidable distance of the tribunals from the scenes of the crimes and the homes of the victims.

In the concluding chapters, Michael Scarf and Milena Sterio state that “it is this book’s conclusion that overall, the tribunals have contributed significantly to the development of international criminal law and international humanitarian law, and that they will continue to influence future prosecutions at the International Criminal Court, as well as future efforts to instill international justice.” That conclusion is amply justified by the excellent analyses contained in the book.

This work will be enjoyed by all interested in the history of modern international criminal law and it will be an indispensable resource and reference for all students of the subject.