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Abstract

A review of:

The UN International Criminal Tribunals, The former Yugoslavia, Rwanda and Sierra Leone by William A. Schabas. New York, Cambridge University Press, 2006. 711 pp.

Keywords

Human rights, United Nations, International criminal tribunal, International humanitarian law

The UN International Criminal Tribunals, The former Yugoslavia, Rwanda and Sierra Leone by William A. Schabas. New York, Cambridge University Press, 2006. 711 pp.

In February 1993, the U.N. Security Council established the International Criminal Tribunal for the former Yugoslavia (ICTY). This tribunal was not created by an international agreement or treaty, but rather as an enforcement measure under Chapter VII of the U.N. Charter. Also, in November 1994, the Security Council established the International Criminal Tribunal for Rwanda (ICTR). Then in August 2000, the Security Council requested the Secretary-General to proceed with the negotiation of an agreement with the Government of Sierra Leone, which led, in January 2002, to an agreement between the U.N. and Sierra Leone to establish the Special Court for Sierra Leone. The announced finalization of the activities of these three *ad hoc* international criminal tribunals at the end of this decade motivated what Professor Schabas terms a "stocktaking" of the lessons and observations that comprise the subject matter of this book (the Security Council adopted a resolution in August 2003 calling upon the ICTY and ICTR to complete investigations by the end of 2004, to complete all trial activities at first instance by the end of 2008 and to complete all work in 2010. U.N. Doc. S/RES/1503 (2004) (Schabas, 43)).

This book fills an important gap as few people, even those in the international human rights field, read all, or even many, of the decisions of the three international criminal tribunals. The book is primarily a reference work, organized into four parts. The first part concerns the history of the establishment of the tribunals, including early cases that challenged their legitimacy and the sources of law used by them. Despite the general impression that the ICTY and the ICTR prosecute serious violations of "international humanitarian law," Schabas notes that it is incorrect to describe them in such a narrow manner, since the jurisdiction of the tribunals includes crimes that can be committed in time of peace as well as war, namely genocide and crimes against humanity (77-8). The second part concerns jurisdiction: territorial, personal and temporal jurisdiction; subject matter jurisdiction generally; and jurisdiction as regards to genocide, crimes against humanity and war crimes. The third part concerns substantive and procedural aspects of prosecution including general principles of law, investigation and pre-trial procedure, trial and post-trial procedure, evidence, the rights of the accused and punishment. The fourth part is the shortest and concerns the structure and administration of the tribunals: the seat of the tribunals; the working languages; the chambers; prosecutor; registry and financing.

The volume is a useful guide to the case law of these tribunals and includes a 36-page table of cases. The Slobodan Milosevic case alone, for example, is referenced under 30 headings, such as "Indictment," "Decision on Motion for Judgment of Acquittal," etc., so that the reader is directed to the precise procedural stage sought. In addition, there is a seven-page table of legislative provisions which references major international human rights treaties, the statutes of the three tribunals and other international treaties. There is also a 53-page bibliography of books and articles on the three international tribunals and related issues, and a 34-page index.

Since there is no other book like this one, it is an impressive *tour de force* simply to have digested all of the cases from not one, but three, international tribunals, presenting them in a readable guide for scholars and perhaps, more importantly, for the new International Criminal Court, which has yet to hear its first case.

Few persons, other than a reviewer, would tend to read this reference work from cover to cover, but doing so brings to the fore certain important points. One important conclusion is that the ICTR found serious violations of Article 3 of the 1949 Geneva Conventions in Rwanda in 1994 as a matter of customary law (65). This conclusion is particularly valuable for U.S. readers who debate whether Article 3 is obligatory or not. By and large, Schabas finds the tribunals have associated customary international law with codified texts, such as Common Article 3 of the Geneva Conventions, as well as the relevant norms set forth in the United Nations International Covenant on Civil and Political Rights and regional human rights treaties as "persuasive authority and evidence of international custom" (99). Consequently, the right to a fair trial, the right to *habeas corpus*, and even the denial of immunity to a head of State or government are considered by these tribunals as norms of customary international law (97-99).

Schabas has done much more than simply digest the cases of the three tribunals; he has provided us with what will undoubtedly be the first of many works to analyze the production of these hybrid courts that were allegedly created to assuage the consciences of the great powers for failing to put a stop to these dreadful crimes. This work has set a very high standard and deserves a place in the library of anyone wishing to remain current as regards new developments in international law.

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**The author of this review, Ms. Christina M. Cerna, is a staff member in the General Secretariat of the Organization of American States' Secretariat for the Inter-American Commission on Human Rights. The opinions expressed in this note are the sole responsibility of the author in the author's personal capacity and are not to be interpreted as official positions of, and are not to be attributed to the Inter-American Commission on Human Rights, the General Secretariat of the Organization of American States, or the Organization of American States.*