

May 2020

The Law of the International Criminal Tribunal for the Former Yugoslavia

Marco Madriz

Follow this and additional works at: <https://digitalcommons.du.edu/djilp>

Recommended Citation

The Law of the International Criminal Tribunal for the Former Yugoslavia, 25 Denv. J. Int'l L. & Pol'y 429 (1997).

This Book Note is brought to you for free and open access by the University of Denver Sturm College of Law at Digital Commons @ DU. It has been accepted for inclusion in Denver Journal of International Law & Policy by an authorized editor of Digital Commons @ DU. For more information, please contact jennifer.cox@du.edu, digitalcommons@du.edu.

Book Notes

M. CHERIF BASSIOUNI AND PETER MANIKAS, *THE LAW OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA*, Transnational Publishers, Irvington, NY (1996); (\$135.00), ISBN 1-57105-004-3; 1094 pp. (hardcover).

If the title of Professor Bassiouni's book states a relatively modest subject — the law of the International Yugoslav Tribunal — what emerges in over 1000 pages is much more ambitious. The book is all at once a documentary of the Balkan conflict, a treatise and commentary on the current state of international criminal law, a case-study-in-progress on war-time atrocities occurring in perhaps the most intractable conflict of the post-Cold War to-date, and an account on the international community's attempt to give it legal significance. Bassiouni, himself an active part of the Commission of Experts investigating allegations of atrocities in the former Yugoslavia, and a contributor to the effort to articulate the Tribunal's statute, takes the reader from the background of the conflict to the establishment of the Tribunal, both within the U.N. and the substantive and procedural provisions of its organic statute. At each stage, the book offers a variety of voices supplementing the author's own commentary, including fact-finding by the Commission of Experts, commentary by U.N. bodies, statements by Member-State representatives, views of the International Law Commission, and scholarly opinion.

Chapter I gives a background to the conflict in the Former Yugoslavia, tracing the roots of the region, the migrations and activities of the Roman, Byzantine and Ottoman empires that set the stage for the "jigsaw puzzle" complexities of the conflict. However, Bassiouni finds an overall plan to each phase of the conflict rather than senseless violence: indeed, the Commission of Experts found a strong probability that "ethnic cleansing" existed in policy. The appendix to the chapter details the findings of the Commission and the International Human Rights Law Institute staff, including reports of Serb, Muslim and Croat camps. Chapter II comprises a "legislative history" of the Tribunal's Statute detailing not only the successive stages of Security Council action but the historical precedents regarding international tribunals. Chapter III discusses the competence of the Security Council to

establish the Tribunal, and the Council's authority to articulate the substantive legal provisions of the Tribunal. With regard to the later, the U.N. recognized that, while the Security Council could not "legislate" the law, it could assign the Tribunal the task of applying existing norms of conventional and customary international law.

The following three chapters deal with the problems of legality and jurisdiction arising from the Statute. Bassiouni details the historical and present state of domestic and international doctrine, highlighting the rather novel complexities posed by an international criminal tribunal; for example, although many crimes under international law remain undefined, the principle of legality is upheld via indirect enforcement, whereby States bring their municipal justice systems, with corresponding national legislation, to bear on offenders. Insofar as the Tribunal constitutes a direct enforcement mechanism, legality would require the articulation of substantive offense within the Tribunal's statute, or by reference to some other body of rules, e.g., national legislation of the former Yugoslavia. In terms of jurisdiction, Bassiouni discusses the roots and ramifications of the Tribunal's "concurrent" jurisdiction, wherein the Tribunal maintains primacy of, yet generally "shares", jurisdiction with the former Yugoslavia. Expanding on the issue of personal jurisdiction, Chapter VI discusses the origins of individual culpability in international criminal law and its application within the Tribunal.

One particularly thorny issue arises from the characterization of the conflict as either international or domestic. A threshold question in the application of the Statute and international criminal law, the increasingly "internal" nature of post-World War II conflicts, including the Balkan situation, has challenged international lawyers and scholars. Chapter VII documents the evolution of law applying basic humanitarian norms in international and internal conflicts. The application of international norms established, Chapters VIII and IX discuss the substantive and procedural rules applied within the Tribunal, including "rights of the accused" under the Statute, giving insight into their development, and into their current statutes in the eyes of members of the international community. Appendix II reproduces military regulations of the former Yugoslavia in their original Serbo-Croatian and English translation. Finally, the remaining chapters deal with the organization of the Tribunal and its procedures. The table of authorities offers an extensive bibliography on international criminal law.

The Law of the International Criminal Tribunal for the Former Yugoslavia provides a comprehensive and painstaking anatomy of the law in this area, from the vantage point of the complex effort by the U.N. to establish an international tribunal to advance that law by giving it effect. Written by an expert in the field, its breadth and significance

surpasses the subject of the Tribunal to encompass a treatise for subsequent development of international criminal and humanitarian law.

Marco Madriz

HOOSHANG AMIRAHMADI (Ed.), *SMALL ISLANDS, BIG POLITICS: THE TONBS AND ABU MUSA IN THE PERSIAN GULF*, St. Martin's Press, New York, NY (1996); (\$45.00); ISBN 0-312-15910-2; 200 pp. (hardcover).

Despite their small size and lack of natural resources, the islands of Abu Musa and the Tonbs have been the subject of big politics over the years. Global powers, such as the U.S., Russia, and England, have used the islands as a political tool, as have regional powers in the Persian Gulf. Currently, Abu Musa and the Tonbs are the subject of a territorial dispute between Iran and the United Arab Emirates (UAE). *Small Islands, Big Politics* presents the Iranian position on this dispute from three different perspectives: historical, geographical, and legal.

Hooshang Amirahmadi, the editor of the volume, takes a historical approach to the problem. Amirahmadi contends that because Iran is the oldest state in the Persian Gulf, its claim to the islands (which he bases on historical claims to the islands as well as a 1971 compromise with the British) outweighs that of the UAE. He ascribes the centuries-long controversy over the islands, the largest of which measures four square miles, to attempts by outside powers to contain Iranian power and influence. The territorial dispute reflects, rather than feeds, tension between Iran and its historical and contemporary political opponents.

Taking a geopolitical approach to the problem, Pirouz Mojtahed-Zadeh emphasizes the strategic location of the disputed islands off the Iranian coast. He traces the attempts of foreign powers, particularly Britain and Russia, to control the islands as part of their larger policy of containing Iran. These historical trends, Mojtahed-Zadeh claims, form an important backdrop to the current dispute over the islands and illustrate the importance of a peaceful settlement and stability in the region.

In the final two chapters, Davoud H. Bavand and Guive Mirfenderski examine the legal basis of Iran's claims over Abu Musa and the Tonbs, respectively. Both claims rest primarily upon centuries of Iranian claims over Abu Musa and the Tonbs, and other states' recognition of Iran's sovereignty over the islands, which the authors recount carefully. Bavand and Mirfenderski assert that even Britain recognized Iran's ownership over Abu Musa and the Tonbs before the British encouraged the Arab sheikdoms of Sharjah and Ras al-Khaimah (which would later become part of the UAE) to occupy the islands at the turn of this century. These two authors conclude that