

# The Future of Internationalized Criminal Courts

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# Internationalized Criminal Courts

- *UNMIK „Regulation 64“ panels and EULEX judges in Kosovo*
- *Special Panels for Serious Crimes in East Timor*
- *Special Court for Sierra Leone*
- *Extraordinary Chambers in the Courts of Cambodia*
- *Section I for War Crimes and II for Organized Crime, Economic Crime and Corruption in Bosnia and Herzegovina*
- *Special Tribunal for Lebanon*

# Characteristics

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- Criminal Courts
- Internationalized element(s) – mixture of international and national judges
- *Ad hoc* and temporary character
- Heterogenous

# Criminal Justice in Context of Post-Conflict (Transitional) Justice

- 1945-2008 – 313 armed conflicts (Mullins)
- Reactions to them:
  - Amnesties :125
  - Truth commissions: 56
  - Lustration legislative: 32
  - National criminal prosecutions: 26
- Criminal justice in total (national courts, international courts, internationalized courts, military courts):
  - 65 in 313 – 19,6 % (international conflicts 24,5 %)

# Justice, Peace, Truth, Reconciliation

**Justice and Peace** – issue of amnesties, “no peace without justice”

**Justice and Truth** – role of criminal courts in establishing the truth

- relationship with truth commissions

**Justice and Reconciliation**

– Post-conflict justice – **retributive and restorative justice**,

- but also **capacity-building** and enhancement of national legal systems, which are failed or weakened because of conflicts

# The Advantages over National Courts

- Political will for prosecution
- Capacity for prosecution – financial support from international community – physical infrastructure, judges and other staff, financial resources for functioning, security for participants, peace and security
- Legal knowledge
- Impartiality

# The Advantages over ad hoc International Criminal Tribunals

- Lower costs of establishment and functioning
- Trials take place where the crimes were committed (*in situ*) – *with exceptions*
- Capacity-building
- Knowledge of the situation “on the ground”
- Incorporation into national criminal justice system (*not always*)
- Faster proceedings without endangering the quality?

# Capacity-building

- Reconstruction or construction of physical infrastructure
- Professional development of national judges and other staff – training programs and mentors “on spot”
- Demonstration effect – no impunity and fair trial standards – first opportunity to see how the trials should be conducted
- Reforms of domestic legal system
- Results better when trials conducted *in situ*



# The Disadvantages in Relation to National Courts

- To keep in mind when deciding on establishment of internationalized courts:
  - Selectivity of criminal prosecutions and temporary nature
  - Integration into national legal system and the need of harmonizing international and national elements
  - The costs of functioning and the speed of proceedings

# The Disadvantages in Relation to International Criminal Tribunals

- Funds provided for functioning
- Mode of their collection (voluntary contributions)
- Cooperation of the third states and comprehensive scope of the committed crimes
- The necessity of compromise (potential – treaty courts)

# The relationship with the ICC

- 2 different situations: a) ICC doesn't have jurisdiction over crimes
  - b) ICC has jurisdiction over crimes
  
- A) ICC has no jurisdiction:
  - *Ratione materiae* – Special Tribunal for Lebanon – terrorism, BiH -organized crime, economic crimes, corruption
  
  - *Ratione temporis* – Extraordinary Chambers in Courts of Cambodia – 1975-1979, Section for war crimes in BiH
  
  - *Territorial jurisdiction* – not a state party and not referred by the SC...

# Crimes under jurisdiction of ICC

- A) Internationalized court instead of ICC – could undermine the universal role of the ICC
  - Fragmentation?
- B) Internationalized court with concurrent jurisdiction
  - States unwilling or unable to genuinely prosecute
  - ICC – capable to prosecute only (some of) top level perpetrators
  - Internationalized court – other top level and mid-level perpetrators
- The case of Rwanda – Rule 11 *bis* – *only one case referred to Rwanda*
- “willing and **adequately prepared** to accept”

# Conclusion – the role of internationalized courts

- **Capacity–building** – the key advantage of internationalized courts for achieving goals of post-conflict justice
- – international and internationalized courts are too expensive to be expected to achieve just primary function
- “Spaceship effect”
- But, **protection of human rights** must be provided – East Timor – more than a year without functioning Court of Appeal

# Conclusion – possible future role of internationalized courts

- Concurrent jurisdiction with ICC
  - States unwilling or unable to genuinely prosecute
  - ICC – capable to prosecute only top level perpetrators
  - Internationalized court – other top level and mid-level perpetrators
- Experiences with ICTY show that time is an important factor – evolution of principle of primacy to complementarity
- The need of referral procedures and establishment of two-way cooperation in Rome statute
- Possible model: international court - internationalized courts - national courts

**Thank you for your  
attention!**

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