Internationalised Criminal Courts and Tribunals: Practice and Prospects

YITIHA SIMBEYE*

Not since the Nuremberg Tribunals of 1945 has international criminal law had so much global appeal. The establishment of the Ad Hoc Tribunals by the Security Council, in 1993 and in 1994, facilitated the revival of global interest in international criminal law.1 The establishment of the Tribunals also helped to cement the idea that individuals can be held personally responsible for international crimes. Although individual responsibility is an established aspect of domestic criminal legal systems, it is a recent development in international law. It was always assumed historically that states were the only subjects of international law, having rights and duties under it.2 Having established that individuals can be personally liable for international crimes, international criminal law is currently looking at more effective ways in which such responsibility can be the subject of legal proceedings. The effectiveness of international criminal law rests in its ability to hold individuals personally accountable.

On 25 and 26 January 2002, a conference was convened in Amsterdam to look at a new system of personal accountability through internationalised courts or tribunals.3 The aim of the conference was to assess their practice and prospects.

* PhD candidate, Reading University, UK.

1 The International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) were established pursuant to Security Council Resolutions. Under the UN Charter the Security Council can create subsidiary judicial bodies, under Article 29, as a response to its efforts to restore peace and security as a non-military measure under Chapter VII Article 41. See: Prosecutor v. Tadic Decision on the Defence Motion on Jurisdiction ICTY, at http://www.un.org/icty/tadic/trialc2/decision-e/100895.


3 The Conference was organised by the Amsterdam Centre for International Law (ACIL), the Project on International Courts (PICT) and No Peace Without Justice (NPWJ), with the support of the University of Amsterdam.
Internationalised courts and tribunals follow a new hybrid or mixed system that combines both domestic and international elements. This new system involves the use of domestic legal structures that are interwoven with international facets. Tribunals or courts operating under this system are located in the territory of the state concerned, where the acts in question were committed. They are composed of both international and national judges and prosecutors, whose ratio is dependent upon the individual tribunals’ statute. Funding for these courts is most likely international.

It is arguable that the political cost of creating fully internationalised tribunals is too great, as witnessed by the apparent reluctance of states to fully subscribe to the new International Criminal Court (ICC). On the other hand, doubts have also been raised about the possibility of effective proceedings in domestic courts, be that for reasons of corruption or lack of a working judicial system. Accordingly, the solution may lie with internationalised courts. By playing a role in the establishment of these mixed courts, either through unilateral Security Council action or through negotiations with the states concerned, the international community can help end impunity. The conference looked in detail at four such courts that have been or are in the process of being established in Cambodia, East Timor, Sierra Leone and Kosovo.

Following from the opening speech by the President of the University of Amsterdam, Professor Cassese (University of Florence) addressed the differences between international tribunals and these mixed courts. He also examined the reasons for the establishment of mixed courts and, new areas in which they could be set up. In concluding, he reminded the participants that international criminal law is a highly complex branch of international law that cannot rely on one single solution, rather, there must be a whole gambit of responses suited to individual situations. In many situations, mixed courts may provide the necessary alternative to national or wholly international tribunals and, as a result, prove to be more effective in the long term.

After Professor Cassese’s introduction, presenters examined the four courts, analysing in detail their strengths and weaknesses and raising various concerns. A particular issue of interest was the effect these special courts would have on a state’s ordinary courts. With a special court in operation, a state may end up with a two-tier system of justice. A specialised court may be seen to be meeting international standards in a way that its national counterpart is perceived to have failed. Another issue raised was the disparate remuneration rates between judges in national courts and those in the mixed courts and indeed within these mixed courts themselves. Tensions are bound to arise where judges listening to the same cases are paid differently with international judges getting more money than their domestic counter-