Military Justice in a Comparative and International Perspective

A View from the Asia Pacific

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Introduction

Many view criminal law as a particularly parochial area of law.1 Since ideas about crime and punishment are normally deeply rooted in social values – and often also in conceptions of public morality – criminal lawyers have traditionally been reluctant to turn to other jurisdictions for inspiration. Comparative criminal law can therefore still appear a fledgling field of scholarly endeavour.2

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Military justice is, of course, even more insular than general criminal law. In military justice, national peculiarities of criminal law become enmeshed with diverging views about the role of the armed forces in society, and the appropriate degree and method of oversight that civilian authorities ought to exercise over the military. Comparative military justice thus limps far behind comparative criminal law.3

This situation appears to be changing, though. On the one hand, peacekeeping operations and ‘coalitions of the willing’ have become a staple of the global security landscape, giving urgency to questions about discipline on multinational operations and inevitably leading to comparisons between different troop-contributing nations. Also, human rights treaty bodies venture into matters of military justice with considerable regularity, leading States to learn lessons from the military justice predicaments of others.

Comparative studies of military justice have so far predominantly focused on Europe and the Americas. Military justice systems of the Asia Pacific region have not been the subject of much discussion from a comparative or international perspective. To begin remedying this situation, in 2016 Melbourne Law School, the Asia Pacific Centre for Military Law, and the National University of Singapore Faculty of Law held a two-day workshop on military justice with a focus on the Asia Pacific region.4 In this paper, we seek to provide an overview of the key themes that emerged in the discussions5 and thereby also introduce the papers contained in this special issue of the Journal of International Peacekeeping.

Military versus Civilian Justice

Different legal cultures – combined with diverse operational environments, contexts and mandates of armed forces – have inevitably given rise to different approaches to military justice around the world. The inescapable opening question is whether specialised military courts are needed at all.


4 The workshop was hosted by the NUS Faculty of Law at their Bukit Timah Campus on 21–22 September 2016.

5 Workshop participants came from Australia, Brazil, Japan, New Zealand, Singapore, United Kingdom and the United States. As the discussions were held under Chatham House rule, individual participants are not identified in this paper.