

## Book Reviews

**John R.W.D. Jones: The Practice of the International Criminal Tribunals for the Former Yugoslavia and Rwanda**

Transnational Publishers, 1998. XVII +743 pages; VIII +353 pages.

The dramatic events in Kosovo and the ongoing horrendous crimes being committed there demonstrate – if need existed – the continued importance of the work of both the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia as well as that of the International Criminal Tribunal for Rwanda.

Given these circumstances, the book under review constitutes an extremely helpful working tool for everybody dealing with the legal issues with which the two tribunals are confronted. It contains an article-by-article commentary on both the two statutes and the rules of procedure of the two tribunals. In that regard, the author not only gives rather brief but, nevertheless, succinct academic analyses of the respective provisions but more importantly refers extensively to the practice of the Tribunal concerned. Thus, any reader may very easily have access to the drafting history of each individual provision as well as to possible amendments that the rules have been undergoing. In particular, the author also refers to the jurisprudence of the two tribunals when applying and interpreting the respective provisions of the statutes and the rules of court.

The high quality of the work undertaken might be very well explained by the fact that the author has, over a significant period of time, worked in the Hague with the ICTY. One might hope, that the author will, in due time, provide readers with an updated version of his work, given that the jurisprudence of the two tribunals evolves rather fast. In such a second volume, he could add both a list of bibliographical references to the work of the two tribunals, as well as a list of references

where the decisions of the tribunals might be found (e.g. references to the ones published in International Legal Materials), given that not everybody might have otherwise direct access to these decisions.

This work constitutes one of the essential, if not indispensable, working tools for everybody involved in monitoring the ongoing work of the two tribunals.

Assistant Professor Andreas Zimmermann, Heidelberg

**Virginia Morris/Michael P. Scharf: The International Criminal Tribunal for Rwanda**

Transnational Publishers, 1998. 2 Vols. XX + 743 pages; VIII + 572 pages.

After the creation of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia, the setting up of the International Criminal Tribunal for Rwanda under Security Council Resolution 955 (1994) again showed the determination of the international community to not let acts of genocide, crimes against humanity and war crimes whether committed in international or internal armed conflicts, go unpunished.

It is against this background that the two authors of the book under review — similar to their previous endeavour to analyse the coming about of the Yugoslavia Tribunal<sup>1</sup> — undertake to give an in-depth analysis of the political and legal issues that led to the creation of the Rwanda Tribunal.

The structure of the work is identical *mutatis mutandis* to this book on the Yugoslavia Tribunal. After giving an overview over the process leading to the creation of the tribunal (p. 1 – 74), the most interesting parts of Volume 1 deal with the legal basis for the establishment of the tribunal (p. 75 et seq.) as well as with the limits of its jurisdiction (p. 117 et seq.). Another important part of that volume (p. 349 et seq.) further analyses the organization and procedure of the Tribunal (p. 349 et seq.) as well as the cooperation and judicial assistance to be rendered by United Nations member States (p. 627 et seq.)

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<sup>1</sup> See V. Morris/M. P. Scharf, *An Insider's Guide to the International Criminal Tribunal for the Former Yugoslavia*.

Volume 2 consists of a range of relevant documents related to the creation and work of the Tribunal ranging from the Statute of the Tribunal itself as contained in Security Council 955 (1994) including documents related to its drafting history as well as documents dealing with the internal work of the Tribunal, such as, for example the Directive on Assignment of Defence Counsel (p. 74 et seq.).

Part VII of Volume 2 contains texts of national legislation which provide cooperation with the Tribunal. While it is obvious that the Rwandan legislation had to be included (p. 369 et seq.), it seems rather strange that only the municipal legislation of the United States is included (p. 389 et seq.) and not that of other States which, at the time, had also adopted such legislation. This fact could be explained, although not excused, *inter alia*, by the inability of the two authors to have access to non-English speaking sources.

One might also wonder whether the inclusion of the documents contained in Part IX of Volume 2, dealing with predecessors of the Rwanda Tribunal such as for example, the Nuremberg Tribunal and the Yugoslavia Tribunal, was really necessary, given that, first, they are readily available all over the world and, secondly that those relating to the Yugoslavia Tribunal have already been reproduced in the above mentioned Insider's Guide.

Although there seems to be some overlap between the two books, the two authors have not simply repeated their arguments as to specific questions but seem to have updated them, taking into account both the practice of the Yugoslav Tribunal as well as that of the Rwanda Tribunal itself. They have also analysed those issues which specifically arose within the context of the purely internal conflict in Rwanda (see e.g. p. 206 et seq.). In that context, however, one might have expected a closer scrutiny of the notion of "serious violations of Additional Protocol II" as well as general description of its contents.

On the whole, the book is an essential working tool for everyone who is involved in following the work of the Rwanda tribunal. Moreover, given its value as a precedent, it is also helpful when it comes to analyse the parallel and sometimes indeed identical provisions of the Rome Statute for the creation of a (permanent) International Criminal Court.

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**Edward Newman: The UN Secretary-General from the Cold War to the New Era. A Global Peace and Security Mandate?**

St. Martin's Press, 1998. vii + 239 pages.

In his 1986 Cyril Foster Lecture, Pérez de Cuéllar emphasized that to understand the role of the Secretary-General is to appreciate the United Nations as a whole. Newman's book can be seen as an attempt in this spirit: "The Office is a focal point of post-Cold War multilateral turbulence as the UN struggles to adapt to rapidly evolving circumstances." (p.2) Whereas the changes in international relations since the time of de Cuéllar's speech do not seem to have affected their basic relationship, both the Secretary-General and the United Nations have undergone dramatic changes regarding their role, possibilities and limitations. In this sense, a careful analysis of the Secretary-Generalship after the end of the Cold War seems to be an inevitable step towards understanding the ongoing transformation of international relations and international law as epitomized in the United Nations. In a wider context the issue also deals with the reciprocal influences of power, institutions and norms.

The book consists of seven Chapters and a Conclusion. Chapter 1 sets the framework for the analysis by introducing the basic features of the development of an international civil service. Chapters 2, 3 and 4 focus on the office of the UN Secretary-General, outlining its functions as well as a short overview of the incumbents from Trygve Lie to Kurt Waldheim. The largest part of the book then concentrates on de Cuéllar's and Boutros Boutros-Ghali's terms of office (Chapters 5 and 6) resulting in a tentative outline of trends and options of a "Post-Cold War Secretary-Generalship" (Chapter 7).

The first question one encounters when dealing with the role of the Secretary-General is how to measure his influence. Can he be considered as an independent actor, or do other factors such as organizational patterns and great power policies determine his activities? Newman tends to neglect the personality factor in favour of the institutional and international influences, and he identifies a number of incidents to support this view. Even with regard to Dag Hammarskjöld, whose outstanding personality he acknowledges, Newman's judgement is that "Hammarskjöld should be seen in the context of institutional shifts which were in turn a reflection of systemic trends" (p.49). But throughout his brief surveys of the incumbents Newman stresses the complex interplay of various factors. One such factor that has gained even more

importance during the last ten years is the US attitude toward the United Nations.

In these circumstances the Secretary-General's resources have to be distinguished from classical tools of power politics. With a large amount of his work happening behind-the-scenes his influence is not easily discernible. But this is also a precondition for the effective use of the office's specific tools. Newman especially emphasizes the Secretary-General's speeches and most of all the annual reports, that give him a unique opportunity to exercise political leadership. But his ideas have to be supported by successes and usefulness in day-to-day politics to convince member states. This is especially true when exercising executive functions as for example in the organization of peacekeeping operations.

The Chapters on de Cuéllar and Boutros-Ghali offer a wealth of case studies on the Secretary-General's activities: From the Falklands Crisis and Rainbow Warrior dispute through the second Gulf War up to the events in the former Yugoslavia, Somalia or Rwanda. Newman's case studies succeed in establishing a balance between necessary background information and the overriding interest of finding common features and trends of the Secretary-General's involvement. One such common feature of nearly all the cases presented is the importance of the Secretary-General's special envoys or representatives (e.g. Diego Cordovez, Giandomenico Picco, Alvaro de Soto etc.) who do much of the foot work while the Secretary-General takes personal initiative only when the circumstances allow that he can effectively use the office's authority.

Apart from that, there is one paradigmatic shift, which can be portrayed by comparing de Cuéllar's two terms of office. He started in the midst of the crisis of multilateralism but ended with a strengthened organisation that gave rise to euphoric feelings about the future of the United Nations. Newman finds the key to this development in an analysis of the exercise of leverage by the various parties and their respective patron-client relationships. The exercise of leverage can obstruct and support the Secretary-General's activities: During de Cuéllar's second term former superpower patronage changed into superpower leverage on the parties involved to solve the conflict: "In the window of opportunity between 1987 and 1992, the Secretary-General was a useful instrument through which a superficially united Security Council could bring to an end some of the residual conflicts of the Cold War. It is interesting therefore that the source of Pérez de Cuéllars ear-

lier marginalization — superpower involvement — was later to pave the way to his activism.” (p.107)

De Cuéllar’s successor, Boutros-Ghali, tried to build on this development and to establish a role of “global leadership” for the Secretary-General. But this new concept went even further introducing a new assertiveness both at the declaratory as well as practical level. Boutros-Ghali’s concept was encouraged by the members of the Security Council when they entrusted him with the task of elaborating proposals for international peace and security after the Cold War. His Agenda for Peace introduced a number of innovative ideas such as preventive diplomacy as well as the institutional establishment among others of the Departments of Peace-Keeping Operations and of Political Affairs. But over the time and due to the frustrations in the former Yugoslavia and Somalia, the new approach lost its momentum and support. In fact, Newman argues, Boutros-Ghali, started on false premises: “The misunderstanding was prevalent in 1992 that the deficiencies of the Organization during the Cold War emanated primarily from Council votes (...) and so as a corollary the absence of vetos in the post-Cold War era would enable the UN to address the ills of the world. (...) However, the buoyancy of 1992 was mistakenly based on the successful 1988-92 period, when the UN facilitated the settlement of a number of regional conflicts in which the superpowers had been involved; the US and Soviet Union had an interest in supporting the UN in its activities then. It was a mistake to believe this level of support would continue.” (p.115). This, among other things, finally led to the US resistance against Boutros-Ghali’s re-election. But Newman still sees a lasting legacy of his tenure: “In sending envoys on his own initiative, talking to the Security Council members and the Council informally, making normative public statements, and assuming political-military control and authority, Boutros-Ghali imposed an activist stamp upon his office which has set the tone for the post-Cold War model.” (p.189)

Beyond these evaluations Newman tries to discover further trends for the future. The conclusion points to new constraints but also new opportunities for the Secretary-General after the Cold War. So on the one hand, the cooperative atmosphere in the Security Council narrows down the traditional Secretary-General’s fields of activity (the “vacuum” in Hammarskjöld’s word) but at the same time it creates new areas of activity and possibly leadership as well as fewer “no-go areas” (p.3). The financial crisis dominates all the Secretary-General’s activities, as Newman argues with reference to the Guatemala mission:

“Again, this is a symptom of financial constraint, political prioritization, and multilateral fatigue: good offices on a shoestring.” (p.181).

Nonetheless, the Secretary-General can not neglect his duty — a duty that has become even more complicated in the last ten years according to Newman: “It is a reflection of the ‘new era’ of UN activities that the Secretary-General — in fact both Boutros-Ghali and Kofi Annan — had to shake hands with the warlord Jonas Savimbi, and give legitimacy to UNITA, before he had irreversibly committed himself to the peace process. Few peace and security situations in the post-Cold War world — and particularly those of a domestic nature — are ‘black and white’ and the Secretary-Generalship must be seen in this light, even though it may lay itself open to the criticism of flirting with warlords. Unfortunately, the international civil service has to address the local strongmen, however risky or distasteful this may at times appear.” (p.144).

In this context Newman offers a plea for a diplomatic approach that was coined during Hammarskjöld’s tenure: the Peking formula. With this formula the Secretary-General negotiated the release of American pilots from China in 1955, by stressing his independent position as Secretary-General and even distancing himself from earlier resolutions and condemnations by other UN organs. De Cuéllar employed this strategy in his mediation efforts on Afghanistan and Cambodia. This approach remains vital for the Office in the future. It is also a variation on the classical question of how to interpret the political powers as implied in Article 99 of the Charter. Newman’s final conclusion stays ambivalent and points to the need of a case-by-case analysis: “While the Secretary-Generalship will always largely reflect the dynamics of the Security Council, it can go beyond this, albeit with the full support of the Council. The Office remains an anomaly, a political chimera.” (p.201) Newman’s thorough analysis shows that the observation of this chimera can reveal some of the underlying structures of international relations.

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