Book Reviews

International Criminal Law

Historical Origins of International Criminal Law: Volumes 1–4
edited by Morten BERGSMO, CHEAH Wui Ling, SONG Tianying, and YI Ping.
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Introduction: digging for a critical and comprehensive understanding

It is a privilege and an honour to introduce Historical Origins of International Criminal Law [HOICL] which, edited by Morten Bergsmo, Cheah Wui Ling, Song Tianying, and Yi Ping, is a monumental tribute to the enormous historical and legal contributions of international criminal law.

The HOICL is not just one book, but four volumes that contain eighty-three essays (styled as chapters) which are linked to two conferences of the same name, one in Hong Kong from 1–2 March 2014; and the other in New Delhi from 28–30 November 2014. The purpose of that is to provide a deeper and critical understanding of the history and foundations of international criminal law.

When discussing the origins of international criminal law, we would usually start with the London Conference and the trials in the Nuremberg and Tokyo International Military Tribunals after World War II. Then, we would go on to the ad hoc International Criminal Tribunals for the Former Yugoslavia [ICTY] and the International Criminal Tribunal for Rwanda [ICTR] in the 1990s, alongside some hybrid or internationalized courts such as the Special Court for Sierra Leone and the Extraordinary Chambers in the Courts of Cambodia. And then, finally, would come the milestone of the development in the field, namely the establishment of the International Criminal Court [ICC] in 2002.

However, the HOICL challenges this timeline by showing that such development does not tell the whole story. Trials in the early days, such as the one held in 1474 before an ad hoc tribunal in Breisach, Austria; the trial of Charles I in 1649 in England; and the prosecutions conducted by the Allied countries throughout Europe and Asia after World War II, show that the Nuremberg and Tokyo International Trials were not the only tribunals of the early period for the international criminal justice system, and that the origins of international criminal law stretch far beyond what it is generally believed.

The HOICL project is the first study to undertake an investigation of the historical origins of international criminal law in a comprehensive, inclusive, and systematic way. The scope of the volumes is broad and comprehensive. All these chapters, by digging into the past, contribute important knowledge by showing how the suffering of war victims over decades around the world has gradually made the world determined to hold those responsible accountable by criminal trials before national and international courts.

All the chapters are well done and worthy of being reviewed in detail. However, in the model of the review essay, which is usually as brief as possible, the risk is great that, in an effort to introduce the four volumes, what to select and to present may be seen as a matter of personal appreciation and preference. Comments may appear selective and oversimplified. So, in order to reduce such risk, I will try to stick as much as possible to the authors’ views, and to focus on what appear as their most important points.1

I now turn to reviewing briefly the content of the four volumes. For the sake of convenience, I will do the review simply in the order of the volumes and the chapters.

1. Responsibility will be mine if there is any misinterpretation of the authors’ views.
Volume 1 is composed of four parts, studying a range of international criminal law trials and institutions up to the end of World War II. It starts with the Introduction, in which the authors, Cheah Wui Ling and Choong Xun Ning, are of the view that, although international criminal law has experienced exponential growth since the 1990s, “there is still much to learn about its origins, and about the historical events, processes and actors that will further our understanding of international law’s own history and development” (pp. 2–3).² David Cohen, undertaking a study on the historiography of the historical foundations of theories of responsibility in Chapter 2, asks “why judges in the Second World War era would have thought they needed a doctrine like JCE (joint criminal enterprise) in the first place”. For him, this is because these judges “were confronted with the unprecedented task of establishing the criminal responsibility of individuals” (p. 23).

Following the two chapters mentioned above, Part 1 presents three chapters which investigate the origins of international criminal law by going beyond conventional historical narratives. In Chapter 3, Liu Daqun introduces the Spring and Autumn Period of China from 771 to 221 BC, regarding it as “a time when hundreds of schools flourished” and when “international law and international humanitarian law were also developing” (p. 112). Geoffrey Robertson QC, in Chapter 4, examines the 1649 trial of Charles Stuart, King of England, taking it as “the first time in modern history that a head of state was charged with mass murdering his own people” (p. 115). For him, it is interesting to note that this case “was conducted under common law and adversary procedures that 350 years later were, in their more developed form, adopted for international criminal courts” (p. 115). Chapter 5 is a contribution made by Shi Bei, Zhang Siqi, and Zhang Qi on Chinese Confucianism and other prevailing Chinese practices in the rise of international criminal law.

Part 2, with seven chapters included, makes a critical examination of investigatory and prosecutorial efforts in the aftermath of World War I. Jackson Nyamuya Maogoto analyzes in Chapter 6 the debate which took place in the 1919 Paris Peace Conference about whether to conduct international trials, and regards it as “[t]he first time major effort to curb international crimes through international penal process arose after the First World War” (p. 171). By looking into the connection between the proposed trial of Wilhelm II and the Nuremberg Trial, Kirsten Sellars is of the view in Chapter 7 that “the Nuremberg arguments were not wholly original” (p. 196). But for Paul Mevis and Jan Reijntjes (Chapter 8), even if the Kaiser had been tried before the Allied Tribunal, this might not have changed history as “the type of defendants in Nuremberg was quite different from the people the Allied Powers intended to prosecute after 1918” (p. 256).

Chapters 9 to 11 take a close look at the Istanbul and Leipzig Trials. For Joseph Rikhof, who critically examines these trials in Chapter 9, “[t]he outcome of these trials was wholly unsatisfactory in terms of providing appropriate justice for the serious war crimes committed by these nations” (p. 259). Wolfgang Form expresses his view in Chapter 10 that “[a]n appraisal of the Leipzig Trials is not an easy undertaking. Many different facets lead to a multifaceted general view” (p. 330). Matthias Neuner, in Chapter 11, analyzes “the facts surrounding these war crimes proceedings and presents them in seven sections” (p. 334), showing that the trials were ineffective in the light of the rules applied and the sentences delivered by the end of the trials.

In history, some unspeakable atrocities did take place without any punishment. In this respect, Lina Laurinaviciute, Regina M. Paulose, and Ronald G. Rogo discuss in Chapter 12 a “forgotten” genocide, namely the Armenian genocide which took place 100 years ago. The authors believe that “the legacy of the Armenian genocide has had a significant impact on international criminal law” (p. 406), and that “Armenia is where international criminal law was born” (p. 406).

² The numbers in parentheses are the page numbers in the volume under review.
Part 3 consists of five chapters, all analyzing events in the period between the two World Wars and before the Nuremberg and Tokyo Trials. When did the crime of aggressive war begin to take place? For Anatoly Levshin, the author of Chapter 13, “the crime of aggressive war was, indeed, born in 1945, but … it was not until 2010 that it finally, became what, on these assumptions, we could recognize as a fully realized norm” (p. 434).

The next four chapters all focus on the work of the United Nations War Crimes Commission [UNWCC] of 1943–1948. In Chapter 14, Dan Plesch and Shanti Sattler believe that the creation of the UNWCC was the result of “the collaborative effort of the Allied nations” (p. 438), which, in the eyes of Kerstin van Lingen in Chapter 15, “brought together legal scholars from different countries” and “formed an internationally accepted advisory body … concerned with formulating a minimum standard in dealing with mass atrocities while the war was still raging” (pp. 475–6). In that regard, Anja Bihler examines in Chapter 16 the role of the Republic of China in the UNWCC in London and Chungking, thinking that “[u]ntil recently the UNWCC has attracted rather scant scholarly attention and was often dismissed as having been of little importance” (p. 507). Therefore, her chapter “seeks to contribute to the ongoing efforts of re-evaluating the contribution of the UNWCC by focusing on the role of one of the participating nations: the Republic of China” (p. 508). Kirsten Sellars, in Chapter 17, also focuses the discussion on the negotiations leading up to the Nuremberg Trials. As to the significance and evaluations of the trials, the author cited what Jackson said beautifully before going to London, namely: “Courts try cases, but cases also try courts” (p. 562).

Part 4 is about interdisciplinary analysis of the record and legacy of the Nuremberg Trials, and includes three chapters. In Chapter 18, David Koller examines the role played by the Nuremberg and Tokyo Trials “in political and legal debates along the way to the establishment of the ICC” (p. 566), while Guido Acquaviva, in Chapter 19, pays attention to language discrepancies in the Nuremberg Judgment. For the author, such discrepancies are not “mere translation mistakes”, but rather a reflection on “how the Judges understood the problems presented to them” (p. 598). Chapter 20 is the last one of the volume, in which Axel Fischer examines the issue of the Nuremberg Trials Project and US information policy. For the author, the very purpose of the trials is “to tell the story of why we are trying the major war criminals rather than shooting them without trial”. It is for that purpose that “an information campaign was launched, using all available mass media and addressing different target groups” (pp. 623–4).

Historical Origins of International Criminal Law: Volume 2
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Both Volume 1 and Volume 2 contain studies of a range of international criminal law trials, institutions, and actors up to the period after World War II. So Volume 2 is simply the continuation of Volume 1.

Volume 2 starts with Part 5 by examining post-World War II prosecutions in Japan. The Nuremberg and Tokyo Trials were the response to the atrocities committed by the German Nazis and the Japanese Militarists. However, Neil Boister asks in Chapter 21 whether the trials by the Far East International Military Tribunal were show trials. One may argue that all criminal trials are “show trials” in the sense that they are public attempts to reach a just pronouncement. However, the question may have particular meaning here, given the existence of some serious criticism of international criminal law. For the author, the principal reason to ask that question was “to explore whether and if so how trials such as that at Tokyo – although arguably tainted – can nevertheless function as the building blocks of international criminal law” (p. 4). In Chapter 22, Yuma Totani examines from a comparative perspective two criminal trials, namely the Tamura and Toyoda Trials which were held in Tokyo in the wake of the Pacific War. The goal of doing that is “to bring to light the two underexplored proceedings and assess how they relate to the Tokyo Trials from the standpoints of both law and fact” (p. 64).
Chapters 23 to 26 turn attention to the evaluation of the Tokyo Trial through different national perspectives. “Does International Criminal Require a Sovereign?” This is the question Milinda Banerjee asks in Chapter 23. By asking and replying, the author does “offer some preliminary thoughts about the manner in which the search for international criminal justice should attempt to divorce itself from the naked exercise of sovereign violence and other forms of exploitative power” (p. 72).

In Chapter 24, Ann-Sophie Schoepfel-Aboukrat examines the French prosecution of Japanese war crimes at the Saigon and Tokyo Trials. For her, these trials from 1945 to 1951 “constituted a resource for overcoming the war and preparing the future world order”, and “[t]heir reflections contributed to the historical and intellectual foundations of international law” (p. 179).

How about the trials held in Asia? Longwan Xiang and Marquise Lee Houle examine in Chapter 25 the contributions made by Judge Haiang Che-chun to the prosecution of Japanese war criminals at the Tokyo Trial. The view offered in the chapter is that “these trials were not representative of victory in the Second World War, but a demand for justice against a greater evil … This is what the Chinese Prosecutor Hsiant Che-chun demanded at the trial” (p. 144). Lisette Schouten analyzes the career of Judge B.V.A. Roling in Chapter 26. “By taking a closer look at Roling’s career”, the author wishes to “consider the reach and legal implications of the Tokyo Trial, the broader contributions of its judges to the emergence of modern international criminal jurisdiction” (p. 178).

Part 6 focuses on the domestic trials of war criminals in China and countries in Southeast Asia. As a matter of fact, alongside the trial by the Tokyo International Tribunal against Class A war criminals, national trials involving Class B and C Japanese war criminals were conducted in the territory of states with which Japan had been at war, including China, Korea, the Philippines, and others.

Alongside that line of history, Ling Yan examines in Chapter 27 the Japanese war crimes trials in China, in which forty-five Japanese war criminals were prosecuted before a Special Military Tribunal sitting in Taiyuan and Shenyang in 1956, thus providing information about the legal basis of the trial and the trial procedure as well as an assessment of the trials (p. 216). Similarly, Barak Kushner and Zhang Tianshu also make contributions in Chapters 28 and 29 focusing on the domestic war crimes trials in China from 1945 to 1956. The thrust of Chapter 28 “centres on analyzing the repercussions from the ensuing military and diplomatic manoeuvres to bring Japanese imperial behavior to justice” (p. 243). Interestingly, it compares the 1956 trials by the New China government with the 1946–1949 trials organized by the Kuomintang Nationalist government. But for Zhang Tianshu, “[A]lthough two different governments conducted the Chinese war crimes trials, it is worth noting that these trials demonstrated, to some extent, a similar attitude towards international law” (p. 267).

Cheah Wui Ling brings attention in Chapter 30 to a case of post-World War II trials in Singapore, namely the Car Nicobar Spy Case. By “Lost in Translation” in the title, the author suggests that the trial might have been plagued by extensive problems of interpretation, thus attempting “to give the reader an idea of how the trial proceeded, how witnesses were called, the type of questions asked and the answers given” (p. 304). In Chapter 31, Nina H.B. Jorgensen and Danny Friedmann discuss the issue of enforced prostitution which is also named “comfort women”. They focus on the Judgments of Temporary Courts Martial at Batavia regarding enforced prostitution in an effort to “identify the historical origins and definition of the war crimes of enforced prostitution” (pp. 333–4). In Chapter 32, Narrelle Morris examines the actual restrictions regarding the dissemination of knowledge of Japanese war crimes investigation and prosecution in Australia and the impact of such restrictions. It is the view of the author that “Australia’s contribution to the development of international criminal law has been effectively, and most regrettably, elided from the historical narrative” (p. 357).

Part 7 consists of ten chapters, exploring the post-World War II domestic prosecutions in Europe. Moritz Vormbaum, in Chapter 33, offers an overview of the trials in the German Democratic Republic (GDR) for Nazi crimes, as well as the laws on international crimes that were enacted by the East German government. It highlights the political importance of both the trials and rules on international law in the GDR. Christian Popken does some research in Chapter 34 on the role of the German Supreme Court in the British Zone (“the OGH”) of occupation. It is interesting to note the view of the author that “[t]he OGH was probably the first higher domestic court to provide strict guidelines for the legal protection of human dignity. Almost 50 years later, the ICTY made reference to the legal practice of this appellate court when it searched for appropriate case law” (p. 430).
As a matter of fact, prosecution of war criminals after World War II took different shapes in different countries. In Chapter 35, Ditlev Tamm compares and contrasts Danish and Norwegian experiences of the prosecution of war criminals. In the eyes of the author, “the judgment of war criminals in Denmark and Norway illustrates in a magisterial way some of the more complicated issues connected with international criminal law” (p. 473). Immi Tallgren examines in Chapter 36 the Finnish war-responsibility trial in 1945–1946. It is interesting to note that the Finnish trial was conducted by Finns in Finland applying Finnish law, but based on an international obligation, namely the Moscow Armistice between the Soviet Union and Britain with Finland of September 1944 (p. 494).

In Chapter 37, Valentyna Polunina presents the Soviet war crimes trial at Khabarovsk in late December 1949, which was the only Allied trial entirely dedicated to Japanese bacteriological weapons programmes and human experiments. But, why did the Soviet government decide to have such a trial so late? The possible reason is that “[t]he Tribunal in Khabarovsk presented an ideal opportunity to promote the Soviet vision of war crimes policy after the Second World War” (p. 539).

From Chapters 38 to 40, all three chapters focus on the war crimes trials conducted by the Supreme National Tribunal of Poland from 1946 to 1948.

In Chapter 38, Mark A. Drumbl discusses two of the Tribunal’s trials, namely that of Rudolf Höss, Kommandant of Auschwitz, described as the site of the largest mass murder in history, and that of Amon Göth, Commander of the Kraków-Plaszów labour camp. Patrycja Grzebyk assesses in Chapter 39 the role of the Polish Supreme National Tribunal in the development of principles of international criminal law, believing that “Poland was essential in bringing German war Criminals to justice since the beginning of the second World war”, as it was the Polish and the Czechoslovakian governments in exile that initiated the organization of the international conference in London in January 1942 where “a proposal for the creation of a United Nations Commission for the Investigation of War Crimes was adopted” (p. 603). In Chapter 40, Marcin Marcinko presents the judicial acquis of the Tribunal with regard to the crime of genocide, focusing on the trials of three war criminals, namely: Arthur Greiser, Governor of Reichsgau Wartheland, Amon Göth, Commander of the Kraków-Plaszów labour camp, and Rudolf Höss, Commander of the Auschwitz-Birkenau concentration camp (p. 641).

In Chapter 41, Veronika Bilkova undertakes a comparative study of the post-World War II trials in Central and Eastern Europe, particularly those in Czechoslovakia, Yugoslavia, and the Soviet Union, so as “to identify certain trends that these trials demonstrated and to assess the compatibility of their course and outcomes with the then emerging principles of international criminal law” (p. 697). In Chapter 42, the last one in Volume 2, Tamás Hoffmann focuses on the post-World War II justice demonstrated by the Hungarian People’s Tribunals. The purpose of the chapter is to examine whether the norms of crimes of aggression and crimes against humanity “found their way into Hungarian domestic law and whether the People’s Tribunals were directly or indirectly influenced by them” (p. 736).

**Historical Origins of International Criminal Law: Volume 3**
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Volume 3 begins with “Doctrine and the Scope of the Historical Landscape of International Criminal Law”, presented by Morten Bergsmo, Cheah Wui Ling, Song Tianying, Yi Ping, and Zhang Binxin. It is indicated that the focus will be on “tracing both the substance of legal rules and the context of their making” (p. 1).

Part 1 of Volume 3 further expands the historical and geographical landscape of international criminal law. Manoj Kumar Sinha, by looking into the ancient Sanskrit text, the *Manusmrti*, or law of Manu, discusses in Chapter 2 the ancient rules concerning the means and methods of warfare, the King’s duty to protect his subjects, and the composition of judicial organs (p. 14). In Chapter 3, Emiliano J. Buis examines the political complexities of transitional justice in ancient Greece while...
analyzing two cases from ancient Greece concerning the different approaches when dealing with violations of “common laws”. Shavana Musa turns attention in Chapter 4 to wartime violations at sea by going back as far as the Middle Ages, when maritime institutions known as admiralty courts occupied “a position in the adjudication of wartime violations and crimes” (p. 63), thus demonstrating the importance in the discussion of the historical origins of international criminal law.

In Chapter 5, Jens Ivensen tries to find out why some of the historical cases had been “forgotten”, such as the Trials of Charles 1, Henry Wirz, and Pol Pot. After research, the author offers three reasons in that respect, namely: “the contested nature of the circumstances of each trial, the domestic nature of the forum and the utility of rooting the historiography of international criminal law primarily in the post-second World War order” (pp. 93–4).

Gregory S. Gordon discusses, in Chapter 6, the criminal proceedings by European powers against Siamese, Ottomans, and Chinese between 1894 and 1900 as the “Oriental Pre-Birth” of international criminal law. These three cases “illuminate an unexplored but vital chapter of international criminal law’s past but also provide invaluable insights into its present and future, including the potential spectre of a new imperialism as the International Criminal Court focuses its current work exclusively on Africa” (p. 122). In Chapter 7, Benjamin E. Brockman-Hawe looks to the transitional justice programme established after conflicts between the Druze and Maronite Christian communities of Ottoman Syria in 1860, highlighting how the concept of crimes against humanity was taking shape. “The work of the Ottoman courts and the Commission forms part of an underappreciated history of international criminal law” (p. 183). Chapter 8, by William Schabas, presents research on how the Katyn Forest massacre was dealt with in the Nuremberg Trial, providing a detailed account of the debates relating to that massacre. He believes that “justice was done” as the “judges refused to convict”, and it is “wrong to invoke the Katyn charge as evidence of victors’ justice” (p. 297).

Part 2 of Volume 3 is devoted to the origins and development of the special doctrinal evolution of international criminal law.

Chapter 9 is the first chapter of Part 2, in which Patryk I. Labuda analyzes the Lieber Code and examines criminal trials and belligerent reprisals as part of the efforts in the development of international criminal law (pp. 301–2). In Chapter 10, Guo Yang focuses on the grave breaches regime of the 1949 Geneva Conventions and its relationship to war crimes under international criminal law. For him, this regime “is embedded within the system of modern international criminal law – constituting a bridge between international criminal law and international humanitarian law” (p. 344). Philipp Ambach offers analyses in Chapter 11 of “how the body of norms in the field of international humanitarian law, as it developed in the late nineteenth and twentieth centuries, has been transposed into the context of individual criminal responsibility” (p. 390).

Chapter 12, with Helen Brady and Ryan Liss as its authors, presents the evolution of persecution as a crime against humanity. The view of the authors is that “[t]he story behind the recognition of persecution as a crime of international concern is a key chapter in the development of international criminal law”. By proscribing this category of international crimes, “international actors pushed the focus of international accountability beyond the regulation of war alone” (p. 429).

For Sheila Paylan and Agnieszka Klonowiecka-Milart in Chapter 13, genocide and crimes against humanity “are two legal concepts that overlap in significant ways. However, they have assumed clear independence as separate crimes under international criminal law” (p. 557). In Chapter 14, with the title of “Individual Criminal Responsibility for Violations of Jus ad Bellum under Customary International Law”, Meagan S. Wong compares the definition of the crimes of aggression at the Nuremberg International Tribunal and the Kampala Amendments to the Rome Statute of the International Criminal Court.

Part 3 of Volume 3 presents six chapters with a focus on the issues relating to origins of modes of liability. It starts with Chapter 15, in which Martina Aksenova “explores the historical evolution of the concept of complicity” and argues that “complicity is just one example of the legal construction resulting from tensions characteristic of international criminal law in general” (p. 629). In Chapter 16, Zahra Kesmati examines the development of conspiracy as a mode of liability in international criminal jurisprudence and “the role conspiracy has played in shaping the Nuremberg Proceedings” (p. 655). Chantal Meloni discusses, in Chapter 17, the evolution of command responsibility. Though the
practical difficulties in bringing to trial high-ranking individuals are never easy to overcome at the political and judicial level, it is generally recognized that one of the most effective means for ensuring promotion of and compliance with international law lies in bringing to justice those military and political leaders (p. 684).

Chapter 18, written by Hitomi Takemura, seeks to introduce the concise history and current legal situation surrounding the defence of superior orders. It is the view of the author that, since international crimes are often committed through organizational structures, the question of whether individuals bear criminal responsibility when they execute an order is “a critical issue” (p. 715). In Chapter 19, Hae Kyung Kim focuses on conspiracy as defined in the Convention against Transnational Organized Crime, and discusses how the acceptance of the Convention and the concept of conspiracy it embodies have been received in Japan and South Korea.

In Chapter 20, the last one in Volume 3, Zhang Binxin examines the mitigating circumstances in sentencing, from the early practice in the post-World War II period to that of the ad hoc Tribunals and the ICC. For her, a notable trend from this history is that “the factors considered in mitigation have increased considerably, and the rationale behind these different factors has also expanded to reflect various ideologies and goals of international criminal justice” (p. 792).

Historical Origins of International Criminal Law: Volume 4
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Volume 4 starts with “The Role of Internationalized Jurisdictions, National Jurisdictions and Other Actors in the Making of the History of International Criminal Law” by Morten Bergsmo, Cheah Wui Ling, Song Tianying, Yi Ping, and Zhang Binxin, in which the authors state that: “this book dwells on more recent developments and considers in particular the contributions made by a number of key institutions and methods in criminal justice for core international crimes” (p. 1).

In international trials, individuals were tried for the first time to answer personally for offences that they had committed while acting in official capacities as heads of state. This is quite significant in human history.

Part 1 of Volume 4 begins with “Institutional Contributions: Internationalized Jurisdictions”, in which there are five chapters focusing on the contributions of international criminal jurisdiction made by different institutions. In Chapter 2, David Re examines the evolution of the structures and procedures of international criminal courts and tribunals from Nuremberg and Tokyo, advancing three factors as reasons to explain why the basic structures and procedures can “persist in the modern international criminal courts and tribunals”, namely, the value of reusing a proven precedent, the need for transparency in proceedings, and the historical background of the creation of contemporary international criminal courts (p. 19). In Chapter 3, Liu Daqun discusses the contribution of the United Nations ad hoc tribunals to the development of international criminal law. For him, these tribunals “have provided a detailed definition of the legal ingredients of crimes of international concern” (p. 160) and “[t]he legacy of the ad hoc Tribunals to international law can also be measured in the influential role they played in establishing the ICC” (p. 160).

Serge Mrammertz and Kevin C. Hughes, with “From Primacy to Complementarity” as its title in Chapter 4, explores the historical development of the relationship between international criminal tribunals and national courts with regard to the prosecution of the core crimes through the practice of the ICTY, in the hope that “other scholars will find the perspective offered of interest, and will be encouraged to further study other areas of the ICTY’s work that equally deserve careful attention” (p. 164). In Chapter 5, Patricia Pinto provides a comprehensive analysis of the principle of complementarity. For the author, the coming into force of the Rome Statute is one of “the most remarkable achievements in the history of international criminal law” (p. 235). However, it is argued that “complementarity is not a new creation of the ICC Statute” (p. 236). In Chapter 6, Mareike
Schomerus focuses on the tension between peace and justice by first giving "a brief overview of the conflict situation at the heart of the ICC’s engagement in Uganda" and then examining "what the ICC looked like to the conflict actors who became its first case and who were faced with the tension between peace and justice" (p. 369).

Part 2, also with five chapters, turns attention to the interrelationship between international criminal law and domestic institutions. In Chapter 7, Seta Makoto analyzes how municipal law works as the origin of universal jurisdiction, and how that can contribute to enlarging the scope of targeted crimes. To illustrate that point, the author chose the arguable case of Adolf Eichmann, and examines the trial “from both the substantive and procedural perspectives” (p. 341). In Chapter 8, Matalia M. Luterstein traces the evolution of international criminal law through the lens of domestic tribunals, using as a case-study the ongoing domestic trials of the human rights violations in the late 1970s in Argentina. “Given that the main paradigm shift took place during the 1990s at the time of the greatest development of the international branch of international criminal law, it is possible to assert that all its enforcement mechanisms (both international and domestic) are linked together and the transformation that occurred in one branch of the discipline after the other” (p. 368).

Hilde Farthofer, in Chapter 9, makes a contribution by examining the difficulties national law-makers are faced with by implementing the crimes of aggression in domestic penal codes. For the author, “[t]his concerns not only the implementation of international law into national law but also the fact that states have to react to the threats imposed on it by both endogenous and exogenous factors” (p. 404).

In Chapter 10, Itai Apter focuses on how the discourse between international criminal law and the civil sphere has affected international criminal law, and vice versa. “This discourse is important to understand and evaluate as the potential implications are not only of a legal nature but also involve political and historical elements” (p. 425). Md. Mostafa Hosain demonstrates in Chapter 11 the significance and importance of Bangladesh’s International Crimes (Tribunals) Act. In the eyes of the author, the initiative taken by Bangladesh after the war of liberation against Pakistan is “both praiseworthy and audacious, as it was undertaken despite limited economic resources and expertise”. “It is among the earliest pieces of domestic legislation to contain international crimes outside the gamut of the crimes committed during the Second World War” (p. 459).

The rules of international criminal law are not abstract. In Chapter 12, the first one in Part 3 that continues to focus on the operational side of the institutions, Helge Brunborg describes how demographic analysis was introduced into the work of the ICTY, and how various dilemmas with respect to the choice of data and methods were “conducted with a strong reliance on individual-level data and descriptive methods” (p. 477). In Chapter 13, Mutoy Mubiala examines the contribution of international fact-finding commissions. By analyzing the function of the international commissions which the United Nations has established since 1992 to investigate serious violations of human rights and humanitarian law, the author comes to the conclusion that “international fact-finding commissions have been an important building block in the recent evolution of international criminal law and its implementation” (p. 551).

In Chapter 14, Yaron Gottlieb presents research on the practice of the International Criminal Police Organization [INTERPOL], in which it is made clear that the INTERPOL considers the field of serious international crimes “as one of its major crime areas”, and works closely “with both international tribunals and national investigative units specializing in this field of criminality” in order to assist the world community in combating these crimes (p. 553). In Chapter 15, Mark A. Lewis examines the history of the International Association of Penal Law [AIDP] between 1924 and 1950. The AIDP was explicitly founded to develop international criminal law. Therefore, “[t]he ideological transformation of the AIDP is an important topic because the organization was and remains a prominent formulator of ideas, statutes and draft conventions that have been adopted by the League of Nations and the United Nations” (p. 602).

It is also worth paying attention to the national trials in the Far East as a contribution to the development of international criminal law. In Chapter 16, Marquise Lee Houle examines how China was actively engaged in the work of the Far Eastern and Pacific Sub-Commission of the United Nations War Crimes Commission, and is of the view that “China’s trials of Japanese war criminals and the
work undertaken by the Far Eastern and Pacific Sub-Commission to formulate lists of perpetrators and procedures for their prosecution, created a stepping stone to the international criminal law that exists today” (pp. 700–1).

The role played by the NGOs should not be forgotten. In Chapter 17, Ustinia Dolgopol turns attention to the efforts and role of people’s tribunals. By taking the trial of Japan’s military sexual slavery as a case-study, the author demonstrates how the work of the people’s tribunal provides recognition to those who might otherwise be forgotten or ignored (pp. 724–5). In Chapter 18, Rahmat Mohamad outlines the position of Asian and African states on the establishment of the ICC, which sheds light on their individual and collective concerns. However, the author believes that “[t]he focus should now be to ensure the credibility of the ICC so that it attains the realm of universality” (p. 748).

Part 4 contains three chapters examining more theoretical aspects of the development of international criminal law. In Chapter 19, Barrie Sander demonstrates how international criminal justice has progressed to a more critical approach and that “all responses to episodes of mass violence are inescapably limited and partial”. Therefore, “what is more needed is for participants within the field to adopt a critical mindset” (p. 755). Chapter 20, by Furuya Shuichi, “aims to examine how the victim-oriented perspective has been historically brought into the field of international criminal law, and whether, and if at all, it has changed the original nature of that field” (p. 839). In Chapter 21, the last one of the volume, Chris Mahony examines “the factors affecting the ‘independence’ of prosecution case selection and their historical origins” (p. 869) by describing “the case selection independence framework and the emergence of international criminal justice” (p. 872).

Concluding Remarks: research for unity, not for division

The years after the end of the Cold War have witnessed tremendous growth of interest in trials of core international crimes. But the confidence of “rightness of international criminal law” requires an understanding of the history of the attempts by the world community to punish the authors of the atrocities.

The HOICL brought more than one hundred authors from different parts of the world, with a wide range of backgrounds and experience, including judges and prosecutors of international criminal tribunals, of regional and national courts, human rights and humanitarian law experts, research scholars and professors, etc. Quite a number of them have made a great contribution by telling unknown or forgotten stories of events and persons from the perspective of the development of international criminal law.

All the trials in history have been a response to the unspeakable atrocities committed. They are the individuals’ sufferings from man’s inhumanity to man. From the discussion in depth in the HOICL about how such atrocities took place, it is clear that the impact of war victimization is across nations, religions, ethnic and other groups, and this is reflected in the trials. Therefore, justice is not reserved only for one nation or one region. It must be for the whole international community.

It is well said that the research project of the HOICL is the one that “concern(s) a topic that unites rather than divides”.3 Regardless of different views on issues such as the principle of universal jurisdiction, the immunity of heads of state, crimes of aggression, or the prosecution policy of the International Criminal Court, etc., anyone can gather around the topic of the history of international criminal law. Difference can not pose as an obstacle to the common understanding of the very purpose of international criminal law, which is to prosecute serious crimes of international law and to protect the basic values of the international community as a whole. There is consensus around the principles of the Nuremberg and Tokyo Trials, the 1948 Genocide Convention, and the 1949 Geneva Convention as the basis of international criminal law.

A trial is a good opportunity to let the world know about the atrocities committed in history. Vengeance is not the goal of the trials. If we dig into the past, it is not for hate, nor for revenge, but for reconciliation and for our best wishes that the world remain peaceful forever. Therefore, the HOICL project is the one that can serve as a bridge to connect scholars and researchers of different nationalities and from whatever backgrounds, political, legal, or economic. In this respect, the project of the HOICL is truly a contribution towards the development of international criminal law.

One fact worth mentioning about the HOICL is that it does offer an opportunity to quite a number of young scholars from non-Western countries, such as Binxin Zhang and Tianying Song from China, who are young but who are already acknowledged in the field of international criminal law. These young scholars have made a great contribution to the project from a variety of perspectives. This is good, as a more comprehensive understanding of international criminal justice is important and necessary if international criminal law is to be truly universal.

The HOICL project is the first undertaken for the purpose of understanding the historical development of international criminal law in a comprehensive and systematic way. So all congratulations to the organizers of the HOICL, especially to Professor Morten Bergsmo, for the wonderful work he and his excellent group of experts have done.

The HOICL project contributes to a more critical understanding of international criminal law and to a better understanding of how the world community has sought to address the horrible atrocities in the history of mankind. It has provided rich information from a variety of sources of the long path in which international criminal law has developed. As a matter of fact, the HOICL project is an excellent source of studies of the history of international criminal law and will help to establish a sound juristic and philosophical basis for international justice. Anyone who is interested in international criminal justice must have a look at the Historical Origins of International Criminal Law.

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Justice in Conflict: The Effects of the International Criminal Court’s Interventions on Ending Wars and Building Peace
by Mark KERSTEN.
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In recent years, the International Criminal Court [ICC] has experienced an unprecedented institutional crisis due to the threat of a mass withdrawal from its Statute by African states. This threat follows the criticisms mounted against the ICC for allegedly targeting only African leaders and for undermining the peace processes carried out in that region. These criticisms raise two pivotal questions: Does the ICC intervention in certain situations have an effect on ongoing conflicts? If so, is it a negative or positive effect? The answer to these questions is provided in the excellent Justice in Conflict by Mark Kersten.

This book originates from the PhD research conducted at the London School of Economics and Political Science [LSE] by Mark Kersten, now a research fellow at the Munk School of Global Affairs of the University of Toronto, Canada. Through a detailed examination of the “peace v. justice” debate and the analysis of two case-studies (i.e. Uganda and Libya), the author presents an insightful study of the ICC’s intervention in ongoing conflicts, looking at its effects on peace, justice, and conflict processes. The book consists of nine chapters, and it presents innovative and interesting findings.

The first part (Chapters 1 to 3) is dedicated to the theoretical and methodological aspects of the ICC’s interventions. Here the author recalls the “peace v. justice” debate and engages critically with the various views expressed in scholarship on the topic. Kersten argues for a middle-ground position, without endorsing any preconceived interpretation. The author proposes a new analytical framework