William A. Schabas and Shannonbrooke Murphy, (Eds.): Research Handbook on International Courts and Tribunals


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The edited volume International Courts and Tribunals by William Schabas and Shannonbrooke Murphy offers a timely and well-researched overview of the growing jurisdiction of legal institutions in international relations. Unlike recent scholarship that addresses the effectiveness of international courts,¹ the book’s objective goes beyond a mere assessment of the de jure power of different tribunals. Instead, it takes an actor-centric approach, putting judges and judgements center stage before grappling with the controversies and challenges various international and regional courts have faced in their relatively short period of existence.

In an effort to map the recent emergence and consolidation of international law as compared to domestic law, rooted in antiquity, the editors have brought together a breadth of legal scholars and practitioners focusing particularly on groups of individuals who have shaped the legal, international institutions for which they work. Part I of the book covers issues ranging from conflict and security to gender and the Global South. The first three chapters each provide an in-depth analysis on specific judgment types. Mónica Pinto, for instance examines the role of the International Court of Justice in regulating the use of force. In the subsequent chapter, Dinah Shelton critically explores the impact of regional human rights tribunals, scrutinizing the effect of regional norms and locally-rooted culture and traditions in their decision-making processes. The third chapter, written by Nicolaos Strapatsas, is dedicated to criminal judgements and offers a historical overview spanning from the post-World War II Nuremberg trials all the way to the recent International Criminal Court cases. Initially, this last author clearly defines the confines of his chapter; rather than focusing on crimes of aggression or genocide, he illustrates the discord among state powers to punishing war crimes. In this context, Strapatsas also provides a concise overview of the controversies with regards to the jurisprudence on crimes against humanity following World War II. In a timely manner, the book also focuses on the historical neglect for the equal representation of women. Joseph Powderly and Jacob Chylinski’s chapter provides “a non-exhaustive, illustrative historical survey of the contribution women judges in international courts and tribunals have made” (143). Their survey includes such Grand Dames as Rosalyn Higgins, Joan E. Donoghue

and Julia Sebutinde, to name a few, yet the authors also point to the difficulties of exactly measuring their impact due to a variety of factors, such as collective, internal decisions by judges which are generally not made public. Following Schabas and Murphy’s holistic and integrative approach, the book also briefly wrestles with the bias issue of judges from the Global South. In her chapter, Liliana Obregón plays down the importance of biased decisions of judges from developing countries who favour states that are similar to their own. Moreover, she highlights the struggle for a balanced representation of all participating states drawing on two case studies, the Permanent Court of International Justice and the International Court of Justice.

The second part of the edited volume explores controversies and challenges vis-à-vis international courts and tribunals. In the introductory chapter, William Schabas concisely summarizes some of the major obstacles of international jurisprudence. First, he mentions the issue of fragmentation, a phenomenon characterized by multiple judgements on the same topic as several courts operate simultaneously. He argues that sometimes “there will be circumstances where conflict cannot be avoided. But that also happens in national justice systems” (32). Second, and probably more problematic, is the political environment in which international jurisprudence is embedded. However, the real challenge does not lie in halting the politicization of international justice. More importantly, smaller powers must preserve the right to access the institutions, which, in turn, should guarantee a balanced functioning. As Schabas correctly asserts: “Justice is at its very best when equality under the law can be delivered effectively” (36). Contributors in the second half of the volume therefore turn their attention to a number of issues ranging from questions related to the legitimacy of international courts and tribunals, to diverse functions of and access to these judicial bodies. Yvonne McDermott and her colleague Wedad Elmaalul, for instance, discuss in chapter 8 the extent to which the perception of a legitimate court is based on the general acceptance of its procedures and jurisprudence. Yet, this is only a means to an end; the ultimate goal lies in compliance with its judgements to address existing “legitimacy gaps” that remain (245). Against the backdrop of compliance chapter 10 examines the issue of enforcement. Richard Frimpong Oppong and Angela M. Barreto argue that “securing the enforcement of international judgements is important, especially as the number of international courts and tribunals is growing” (297). Although international non-judicial institutions may technically be used as a recourse for enforcement, in practice this opportunity is rarely seized, particularly because parties have to be members of the constitutive treaty that created the court or tribunal in question. The authors also refer to self-help but dismiss it due to the highly political measures it involves. In this context, it is essential to briefly touch on the challenges in relation to the proliferation of international courts and tribunals. Karin Oellers-Frahm highlights the issue of fragmentation in view of an increasing number of judgments and a diversification of judicial institutions. She concludes, however, that proliferation is necessary in spite of the resulting fragmentation it creates. According to her,

‘in a largely uncoordinated and unintegrated legal system the proliferation of judicial bodies is in the first place a promising means to further system building and cross fertilization requiring cooperation and communication between courts, without affecting their autonomy and independence’ (p. 335).
The increasing number of international judicial bodies therefore allows for a diversified review of international norms and rules and helps consolidate international law.

Given the institutional growth of international courts and tribunals since the end of the Cold War, Yaël Ronen evaluates the specialization of functions exercised by different courts, in her contribution to the volume. One aspect, individual access to regional judicial bodies, has given cause for concern. In fact, the direct involvement of individuals in court proceedings, such as the European Court of Human Rights, has created “tensions between the individual problem-solving function and the functions which have a general effect” (p. 475). The juxtaposition of individual interest and the creation of broader legal norms has further sparked questions about whether international courts, as public authorities, should be subject to more scrutiny and administrative regulation.

While the extensive contributions in this volume represent an impressive well of scholarly knowledge, the thoughtfully edited work nonetheless falls victim to a conceptual gap between law and society that other authors have tried to address in their scholarship. Schabas and Murphy aim to offer their readers a handbook that transcends the traditional scope of legal analysis and legal commentary by dedicating the first part of the volume not only to decisions, but also to the individuals who render the sentences. Such a conceptual framework contributes valuable insights to the canon of scholarship on the issue. Yet, the assemblage of contributions presented leaves the reader longing for a more sociologically driven analysis. The nexus between law and society emerges at times in the volume’s contributions, such as Joseph Powderly and Jacob Chylinski’s chapter on women judges or Yvonne’s McDermott and Weddad Elmaalul’s chapter on the legitimacy of international courts and tribunals, to mention but a few. Unfortunately, neither of these contributions embark on a deeper, exploratory path to untangle norms diffusion, knowledge dissemination and the role of power exerted by different types of international judges and their jurisprudence. As Yves Dezalay and Garth Bryant underline in their work on the role of lawyers in constructing the field of transitional justice; what is crucial in these turf wars

‘is the social credibility of the professionals who produce and use the normative knowledge in order to promote, expand (and constantly redefine) transnational regulation, while seeking at the same time to impose themselves as legitimate agents of these regulatory processes’. Judges therefore become power brokers using different forms of capital – including social, legal, political and economic – and who weigh the stakes between the national and transnational level. As such, they do not constitute neutral bystanders but benefit from their actions. These dynamics could have merited more attention to help understand the sociopolitical and sociocultural power relations between legal practitioners, lawmakers and society more broadly.

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Overall, Schabas and Murphy’s volume constitutes a promising first step into socio-legal scholarship that will provide a deeper understanding of the dynamic between international legal institution, jurisprudence and normative dissemination of knowledge. Their exemplary collaborative effort is an inspirational resource not only for legal scholars, but for students in a variety of disciplines, including political science, sociology and anthropology. Academics as well as practitioners will find this valuable, educational handbook a great source of original, innovative perspectives, which will help shape and reframe scholarly debates in the field.