

Klaus Bachmann, Peter Lambertz, Thomas Sparrow-Botero. *When Justice Meets Politics: Independence and Autonomy of Ad Hoc International Criminal Tribunals.* Frankfurt am Main: Peter Lang/Frankfurt am Main, 2013. 404 S. ISBN 978-3-631-63356-4.



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The book, which explores the influence of politics to the international justice, was unfortunately published before the latest scandal *vis-à-vis* the judgments in the Gotovina, Perišić, and Stanišić and Simatović cases in International Criminal Tribunal for former Yugoslavia (ICTY). The acquittals indicated, according to Gordy that “the establishment of legal standards looked fine for small and marginal states” but once implications for the more powerful states were clear, the Tribunal “jumped backward”. Eric Gordy, What Happened to the Hague Tribunal?, in: The New York Times, 06.06.2013. In a response to acquittals, NGOs from the region sent the letter to the United Nations Secretary General, Ban Ki-moon to urge him to use his authority and “order a prompt and thorough inquiry, to establish beyond doubt if there has been a violation of articles 12 and 13 of the ICTY Statute, which guarantees the independence, impartiality, integrity and high moral character of judges serving at the ICTY”. Humanitarian Law Center, Letter to UN Secretary General, 25.06.2013. Available at: <<http://www.hlc-rdc.org/wp-content/uploads/2013/06/Letter-to-His-Excellency-Secretary-General-of-the-United-Nations-25->

[June-2013.pdf](#)> (08.11.2013). This time Tribunal was questioned by its most devoted supporters, for siding with the interests of the powerful states.

Although questioning independence and autonomy of Tribunals, the book by Bachmann, Sparrow-Botero and Lambertz does not address this kind of control, but looks at the more subtle ways of influencing Tribunals’ work. Departing from the current debates questioning “political or apolitical” nature of Tribunals Rachel Clare Kerr, *The International Criminal Tribunal for the Former Yugoslavia: An Exercise in Law, Politics and Diplomacy*, Oxford 2004. , troublesome independence of prosecutor John Travesty Laughland, *The Trial of Slobodan Milošević and the Corruption of International Justice*, London 2007; Florence Hartmann, *Peace and Punishment, The secret wars between international politics and international justice*, Paris 2007. , and highly political process of cooperation Victor Peskin, *International Justice in Rwanda and the Balkans: Virtual Trials and the Struggle for State Cooperation*, Cambridge 2008. this books fills the gap in current

research by addressing three issues: (i) the cooperation with ICTY and the relation between nation-states and EU in this endeavour, (ii) potential influence of public discourses in rendering judgments and (iii) the usage of “reconciliation” as politically proclaimed goal in judgments. The main question is whether and how different actors and territorialization regimes, from national to international and supranational, actually influence decisions of the ICTs, and vice versa, namely to what extent judges/prosecutor consider political goals proclaimed in the Statute as relevant in their decision making.

Considering its structure, the book is divided in three parts, written by three authors in rather unusual arrangement, which neither calls for common position of authors, nor presents three different texts in the edited book, but combines their work thematically. In the Introduction, Bachmann explains that the book is a result of “joint endeavour” with the aim to create “homogenous result” (p. 18). Nevertheless, because of completely different methods, sources and theories on which those three texts rely, the reading does not go smoothly from one chapter to another, and perhaps the whole work would be more convincing if positions of the authors were better harmonized or more distinctively separated.

The first part, “Role of the ICTY in EU Accession of two Balkan States, Croatia and Serbia” seeks to determine whether ICTY should be considered as a Principal or Agent of Europeanization. The chapter aims in addressing the question of the ICTY’s autonomy, understood as capability of tribunal to enforce cooperation independently from EU and its member states, looking for a policy shifts in the process of EU accession of Croatia and Serbia. The author identifies three policy shifts, some in which ICTY has enormous influence to the policy of EU, and others where Tribunal was clearly not influential, mainly in situations when such insistence threaten to increase political tensions. Assessing the conditionality as

inconsistent and sometimes ineffective, the author concludes that it was still often successful, compared to lack of similar mechanism in the case of Rwanda.

The second chapter offers an innovative approach in assessing congruencies between different outside actors, like media, governments, NGOs, and prosecution and judgment framing of the crimes. In this case, autonomy of Tribunal is understood as independence of judicial crime-framing. Interestingly, judgments are also considered as merely one frame among others, with no particular supremacy, while prosecution frame has no distinctive importance, regardless its role in legal proceeding. Perhaps more cautious examination of the relation between frames and actors positions might have been attempted – for example, in several cases he stresses aggressive position of the Human Rights Watch, positioning this NGO as a real watchdog of transitional justice, but he does not go further in establishing what is the mission, financial or political background of the organization, nor does he follow the lead of congruence between several frames as they might indicate more interesting political loyalties and accomplices. Furthermore, he does not offer any kind of frames evaluation, on epistemological, moral or legal level. The analysis shows nevertheless that Tribunals succeed in establishing new frames of events, although in most of the cases judges trust and rely more on Western expert witnesses (p. 275), and tend to “stay within the boundaries of the mainstream narratives” (p. 384).

Departing from Wittgenstein’s argument that the meaning of the word is in its usage, the third part of the book compares theoretical concepts of “reconciliation” with the way the concept was used in different legal documents and applied in the Judgments. Considering the UNSC resolution which defined ICTR aim in “contributing to lasting peace and security and national reconciliation” (p. 286) Lambertz provides a brief review of rec-

conciliation theory, ending with an open definition of the concept which is seen in conjunction of “social space, legal space, memory and truth production” (p. 309). Moreover, the text provides a typology of different ways criminal proceedings might contribute to the reconciliation, from sublating vengeance, acknowledging victims, individualizing guilt, consolidating democracy, ending impunity and generating truth. Finally, the authors look for the ways the concept of “reconciliation” has been used in judgments of two ad hoc tribunals, showing large inconsistencies in few cases when reconciliation was mentioned as potential consequence of the judgments.

This book offers a valuable reading and an important empirical test of optimistic expectations of Tribunals’ independence and contribution in transitional justice. It reveals a novel insight into the several aspects of contested relation of justice vs. politics in global arena and sets new approaches in dealing with the subject.

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