

# **International Adjudication and International Terrorism**

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## **Introduction:**

At one time ignored by the international community, international dispute resolution has attained a growing and unparalleled magnitude in the international arena. Since World War II, and particularly in the post Cold War era, it cannot be contested that the number and activities of international courts and tribunals have increased dramatically.<sup>1</sup> In a world where so many peoples live side by side, and where their interests often collide, disputes are inescapable. Although most disputes do not pose significant social problems<sup>2</sup> and can be left to work themselves out, others require the immediate attention of the international community to find ways to resolve them in “a manner that international peace and security, and justice, are not endangered”.<sup>3</sup> However, the world has begun to witness the rise of new forms of disputes, disputes that do pose a significant threat to international security: disputes dealing with international terrorism.

In the past few years the international community has seen a rise in international terrorism, and international law has been stunned with a new problem that it has not been prepared for. Without international legislation defining what constitutes international terrorism, no alternative dispute settlement bodies are prepared to deal with such a phenomenon. The international community awaits an alternative to the use of force by states in their endless efforts to combat and suppress terrorist activities. But there is another phenomena in international law that may have a potential solution, perhaps not at the present time, but in the distant future. The proliferation of international courts and tribunals results from a necessity to spawn alternatives to war as a measure to prevent conflict escalation, and the need to provide adequate means for international law to preserve the peace.<sup>4</sup> Although there have been many international responses to terrorism, the question arises about how the proliferation of courts and tribunals can promote the creation of a new international adjudicative body to cope with the concerns the world faces today. This paper focuses specifically on the proliferation of international adjudicative mechanisms and whether or not this momentum can promote the creation of a new international adjudicative body to cope with the rise of international terrorism as an alternative means to the War on Terrorism.

## **Terrorism and International Law:**

Since the 2001 September 11 attacks in New York and Washington, DC, terrorism has become the centerpiece of foreign policy and international security discourse. However, the definition of what constitutes ‘terrorism’ varies from society to society, from government to government and, to a lesser degree, even from academic author to academic author. Such diversity of definition is problematic when one strives to develop a common policy against ‘terrorism’.<sup>5</sup> The highly politicized nature of this

discourse is one of the main inhibiting factors to the challenges that international law faces in creating a proper legal mechanism to provide an adequate solution.

International law is the normative expression of a political system, and in the international system of states, politics will turn to law to achieve desired ends.<sup>6</sup> However, this requires consensus among states. To understand the nature of international law it is necessary to understand the relations between states, and their role in the creation of the law. The problem with international law in dealing with terrorism is that there is no consensus of what terrorism incorporates. In order for international law to deal with international terrorism, it requires one legal definition. Although we are familiar with such terms as 'terrorism' and 'terrorist', they have not been strictly defined legally, and this prevents any such analysis by international law or any action by an international adjudicative body.

Terrorism has been defined by a number of states.<sup>7</sup> Granted there have been many definitions proposed by scholars and public figures, but it is important to deal with state definitions since states have legal personality, and, in the end, are responsible for the creation of international law. The United States defines terrorism as "premeditated motivated violence perpetrated against non-combatant targets by subnational groups of clandestine state agents, usually intended to influence an audience. International terrorism is terrorism involving the citizens or territory of more than one country."<sup>8</sup> This definition varies from the British definition, which elucidate that "for the purpose of the legislation, terrorism is the use of violence for political ends, and includes any use of violence for the purpose of putting the public or any section of the public in fear".<sup>9</sup> The various definitions of terrorism encompass different elements and embody specific aims resulting from experiences these states have had with terrorism.

For the creation of one legal definition of terrorism by states - to create new law that can establish any breaches of international obligations - a consensus is requisite. Although there has been a consensus on the need to urgently prevent and suppress terrorist acts<sup>10</sup> and to combat all forms of terrorism,<sup>11</sup> there has still not been a consensus as to what actually defines terrorism under international law. It is for this reason that many military responses to terrorist acts have been seen as violations of the territorial integrity of states that are not directly responsible.<sup>12</sup> There is no agreement as to what constitutes a terrorist, and therefore responses to what some define as terrorist attacks can be seen as violations of international law by others who have a different perception of what accurately composes terrorism. This has had serious consequences for international law.

Terrorist attacks have usually been defined as serious offences that are punishable under national legislation by national courts.<sup>13</sup> However, these offences have crossed boundaries and have reached an international level, and need new means to penalize such offences. One proposal is that such offences be defined under international law so that they may be punishable under international legislation and by international adjudicative bodies. This has been suggested by several members of the international community<sup>14</sup> who proposed that terrorism be considered as an international crime to be subjected to the jurisdiction of the International Criminal Court as a crime against humanity. Many states, including the United States, opposed the idea on the grounds that the offence was not well defined, that it would politicize the court, and that

prosecution and punishment by national courts were more efficient than by international courts and tribunals.

These grounds formulate a question that has not been subject to much discussion but requires the immediate attention of states, and the entire international community, in order to be addressed: How can national courts prosecute and punish terrorists whose organizations are not enclosed by state boundaries and whose operations spread across a multitude of countries? They don't, and this presumes the underlining conclusion that they do not have the capacity to do so. States, however, are not concerned with such issues, and focus more on the legality of the use of force in combating terrorism,<sup>15</sup> rather than the means of prosecuting and punishing the offenders.

The creation of new international courts has in the past 'judicialized' international relations and subjected international disputes to binding third-party adjudication.<sup>16</sup> The lack of a complete and comprehensive reaction by international law as a discourse and relevant authority in the War on Terrorism calls for a new mechanism to deal with international terrorism: an adjudicative body of international character, capable of enforcing binding decisions regarding behaviour strictly defined, under state solidarity, as international terrorism, and the capacity to prosecute and punish such behaviour. It is not being suggested that this solution is possible, nor is it being suggested that there is evidence to back up such a claim. It does, however, suggest that the international legal order as it stands today is not capable of dealing with the issues of international terrorism, and perhaps an analysis of international adjudication as an alternative means to the settlement of disputes, can open doors to a plethora of new ideas which may lead us, eventually, to the creation of new mechanisms with the potential of solving these issues under the framework of international law.

### **The Pattern of Emerging Adjudicative Bodies:**

States in conflict can choose from a range of methods to resolve disputes short of the use of force or coercive sanctions,<sup>17</sup> but there has been an increasing preference towards the use of adjudication. When looking at the creation of international adjudicative bodies, one can observe a pattern of how they emerge. Most, if not all, international adjudicative bodies that have been created by the international community have spawned as a result of a dispute of some nature. In this section I will limit myself to a number of selected international adjudicative bodies that highlight this trend with regards to war. The international adjudicative bodies that will be discussed represent three archetypes: the International Court of Justice (ICJ), a permanent court; the International Criminal Tribunal of Rwanda (ICTR), an ad hoc tribunal; and the Special Court for Sierra Leone (SCSL), a hybrid tribunal.

The end of World War II brought with it a general feeling among all states that there should exist a new international institution to help govern the relations among states. With the failure of the League of Nations and the Permanent Court of International Justice (PCIJ) to maintain international order after World War I,<sup>18</sup> the world thought it best to create a new international adjudicative body after World War II, a body that was tied to solid world organization. With the creation of the United Nations, the most comprehensive peaceful settlement institution in terms of purpose and its members,<sup>19</sup> appeared the ICJ; its "principle judicial organ".<sup>20</sup> The ICJ was created in 1946 to

succeed after the failures of previous institutions to prevent World War II, and in light of the need for a permanent judicial body with binding decisions to deal with international disputes between states. The virtual monopoly<sup>21</sup> of the ICJ on the judicial resolution of international disputes soon came to an end with the markedly increased number of international courts.<sup>22</sup>

The ICTR was established in November 1994 by the UN, as an ad hoc tribunal to “put an end” to serious crimes such as genocide and “to take effective measures to bring to justice the persons responsible for them.”<sup>23</sup> On April 6<sup>th</sup>, earlier that year, the death of President Habyarimana of Rwanda triggered the beginning of the genocide that killed more than 800,000 Tutsi and moderate Hutu in ninety days.<sup>24</sup> The creation of the Rwandan tribunal has been criticized and contested by many scholars and governments to be the mobilization of political will as a result of public shame and outrage.<sup>25</sup> I do not wish to delve into such details, but, rather, focus on the fact that it was created, regardless of any criticism, as a result of the civil war in Rwanda. This is to reiterate and stress the trends that result from war: the international community’s creation of a new tribunal.

The SCSL was a hybrid form of an adjudicative body created as a *sui generis* court by the United Nations and the government of Sierra Leone, through Security Council Resolution 1315. Its hybrid nature stems from its applicability of international law and the national law of Sierra Leone.<sup>26</sup> The court’s aim was to prosecute “persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean Law”, stemming directly from the civil war in Sierra Leone and the regional links in West Africa, particularly Liberia. With the ending of the civil war officially declared in January 2002, the international community thought it best to create an adjudicative body to deal with the aftermath.

The ICJ, ICTR, and SCSL are only three examples that illustrate this general trend amongst the actors in the international community of creating an adjudicative body as a response to war. Other examples that exemplify this trend include the International Criminal Tribunal for the Former Yugoslavia, the Extraordinary Chambers in the Court of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea, the Nuremberg Tribunal, the Tokyo Tribunal, and the Iraqi Special Tribunal to name a few. The motive behind illustrating this trend of how tribunals tend to emerge after the onslaught of war is to set the scene for the emergence of a new international adjudicative body of some sort, to deal with the consequences of a new war that the world faces today: the War on Terrorism.

The War on Terrorism is unlike World War II, Rwanda, or Sierra Leone. It is a war that stretches across continents, but does not deal with individual states. Rather, it is the response to actions of groups and organizations of individuals who fall under the category, in international law, of ‘non-state actors’. These ‘non-state actors’ and their offences do not fall under humanitarian law, or in fact, under any international law that has been agreed to by the consent of all states related to the ongoing War on Terrorism. International law has, nonetheless, transformed through great developments over the last century with new actors, and has emerged as a common language that cuts through boundaries and into societies.<sup>27</sup> In addition, as the trend of emerging international adjudicative bodies has witnessed, there is potential for the creation of new tribunals, and in that same view, the potential for one to deal with

terrorism. This new tribunal, however, must be akin to no other, for it will deal with a dispute that has not been dealt with, at least in a non-violent manner, in the international community even to this day.

### **Changes Required for the Development of an International Adjudicative Body to Prosecute and Punish Acts of Terrorism:**

Will the creation of a new tribunal to contest the actions of terrorism be possible and successful in the world we live in? Whether or not it is possible depends on if enough minds, particularly those of states, decide that it is possible. Its success depends on its satisfaction of certain criteria. Some scholars seem to think that there are certain attributes to a successful international court. Helfer and Slaughter see a successful international court as an independent body, composed of senior, respected jurists with substantial terms; they have independent fact-finding capacity; their decisions are binding as international law; they make decisions on the basis of “principle rather than power;” and they engage in high quality reasoning.<sup>28</sup> Whether or not a tribunal of this calibre exists is a matter of much debate that does not need to be addressed here. What does need to be addressed is what international law needs to do to make it possible

The statute of an adjudicative body typically addresses the laws that are applicable to its functions and purposes. On this note it is important to stress that for the creation of an international tribunal to deal with international terrorism, a definition based on international consent by states is required. Although one does not exist, there have been multiple definitions adopted by different states, which leads me to believe that there is a constant development of the term’s definition, and perhaps the potential for an international definition.

Most international adjudicative bodies, such as the ICJ, only have the jurisdiction to prosecute and punish states. Yet still, there has been a diminutive movement towards the incorporation of other actors on the playing field of international law. Criminal law has seen the development of individual responsibility, and moved away from state responsibility. Human Rights law has also widened the application of international law to include every individual human being on this planet. The United Nations system has increasingly been opened to non-state actors and observers. An example of this is the presence of many industries and NGO’s at the negotiation tables of the UN Framework Convention on Climate Change.<sup>29</sup> There is a movement in international law towards involving other actors into the scope of its application, and through this development a valid prediction can be made towards a future involvement of terrorist organizations and their liability under international law. The role of new “actors” does seem to underpin many other changes which seem to be underway in international law.<sup>30</sup>

Can international law place international terrorism into what James Cameron calls a new “public law spine,”<sup>31</sup> that links national law with international law? Only time will tell of the development and possibility of such a hypothesis. It is understood that in current international law, terrorism and terrorists do not have any legal standing, and whether the development of international law does engulf them as legal actors is a prospect, although perhaps not in the near future. In the meantime, and for the purpose of this paper, I will assume that if there was such a concept, in the future,

would international law still be able to create an effective international adjudicative body to deal with international terrorism? There has been much debate on the advantages and disadvantages of the proliferation of international adjudication and the creation of different forms of adjudicative bodies.<sup>32</sup> For the sake of this paper these criticisms will be linked to the phenomena of international terrorism, and the possible need of the creation of an international adjudicative body to address the failures of national courts in dealing with such a phenomenon.

### **Concerns Regarding the Proliferation of International Adjudicative Bodies:**

With the proliferation of international adjudicative bodies, and in particular with the acceleration of this proliferation after the end of the Cold War, many international lawyers, as well as scholars in the field, have begun to question the significance of such a development. Should there be a greater movement towards an increase in adjudication, and therefore a creation of yet another international tribunal, conceivably on the horizon, to manage international terrorism? There are many different aspects to international adjudication that call for analysis, but for the sake of this paper it will be limited to only a few concerns that scholars and lawyers alike tend to place a relative importance on: overlapping jurisdiction, conflicting norms, and the fragmentation of international law. However, I intend to show that despite the relevance and validity of such concerns, they would not apply to the creation of a new international adjudicative apparatus to cope with international terrorism.

A major concern among critics of international law and the evolution towards an overabundance of adjudicative bodies is that of overlapping jurisdiction that arises as a result. An obvious concern is multiple tribunals addressing the same dispute, without adequate rules for dealing with overlapping jurisdiction.<sup>33</sup> The ICJ has faced this issue on several occasions, but has been careful not to destabilize existing law-governed adjudicative decisions.<sup>34</sup> Overlapping jurisdiction between the ICJ, the World Trade Organization, and the International Labor Organization, to name a few, is becoming gradually more probable in practice.<sup>35</sup> This problem is understandable but very unlikely if an international body was created to adjudicate issues of international terrorism.

The creation of a mechanism based on an international definition of terrorism would be the first of its kind, and would not have the problem of overlapping jurisdiction, for the simple reason that no other existing adjudicative body actually manages the problem of international terrorism. The ICJ, with its broad jurisdictional capacity, only deals with states, and not with non-state actors. The only laws that do deal with non-state actors in similar fashion are humanitarian law and human rights law, neither of which have any legislation in the form or creation of an international adjudicative body. Most criminal courts have similar legislation and their jurisdictions can extend within one another's playing field.

If international terrorism was defined under international law, the creation of a court or tribunal by means of such legislation would not create any conflict of overlapping jurisdiction, and, in fact, would set a precedent. It would create a new adjudicative body, fit for formally binding decisions reached according to new legal rules.<sup>36</sup> It would be the first of its kind: an independent tribunal where private parties would have access and domestic legal systems can enforce such judgments, particularly

because there is already existing legislation in national laws regarding terrorism. As I have mentioned earlier, there does not exist a legal definition of what constitutes terrorism under international law. However, I am working on the assumption that there may eventually be such a definition, and if so, a creation of a tribunal to prosecute and punish based on that definition would not hinder the pressures that scholars feel on international law as a result of the proliferation of courts and tribunals.

Another concern regarding the proliferation of international adjudicative bodies is that it may generate a conflict of norms. With the multiplicity of international courts and tribunals appear the increased density, volume, and complexity of international norms.<sup>37</sup> The outbreak of international adjudication in international relations has brought with it an outbreak in international law-making.<sup>38</sup> The different courts and tribunals have been established independently and often by different constituencies, and under the different rules of application. International courts and tribunals enforce treaties and legislation that were created and ratified by states. In the creation of a new court and tribunal, it is implied that there is a creation of new legislation and a treaty under which the adjudicative body would operate. Since there are many existing international adjudicative bodies that inhabit the same or similar subject matter, a conflict of norms is inevitable, predominantly when they deal with the same problem but contain different conditions to resolve it. This is an obvious concern that should not be taken lightly. However, in the creation of new international legislation, which has not been created previously in history or time, can there be a conflict of norms? There cannot be a conflict of norms when the norms that are newly created do not resemble norms that previously exist. There is no legislation on international terrorism that is relevant to the new threats in the international community. There is legislation on the need to combat terrorism, but no legislation on what terrorism actually is. Therefore, in hopes of the creation of a legal definition of international terrorism, and an international adjudicative body to enforce such legislation, there not need be any concern from the international law advocates on its impact to the proliferation expansion.

In the last few years, there has been a tendency amongst international lawyers and academics to question the character of the international legal order. Concern has grown as to whether international law should be based on a “fully-constituted” international legal system.<sup>39</sup> With the proliferation of international adjudicative bodies, some feel that the ‘system’ of international law is fragmenting, and the creation of new courts and tribunals will only lead to a greater fragmentation. As it is, international tribunals have become more diverse and specialized. Contrary to some expectations, the world has not moved toward a single judicial system comparable to a domestic hierarchical judiciary. The fragmented development of international courts worries some international legal scholars who favor a unitary international legal system.<sup>40</sup> However, the worry of those who favor a unitary international legal system does not imply that its fragmentation is harmful, for there are many who are delighted by this development.

Defenders of fragmentation argue that the selection of international adjudicative bodies allows the development of special expertise, and that a unified body would be less diverse and representative, and would devote less time to each issue.<sup>41</sup> A new adjudicative body specializing in the legislation and knowledge of international

terrorism can focus explicitly on dealing with disputes related to it. The United States and other nations who opposed incorporating a definition of terrorism into offences falling under the umbrella of 'crimes against humanity', made a valid point in that it would broaden the scope of the International Criminal Court.

Regardless if one is an advocate of the fragmentation or the unitarianism of the legal system, the creation of a body of law, and a mechanism to enforce it, would not disturb the legal system. It would be a new adjudicative mechanism incorporated into the already existing system of international law, as well as a specialized body to adjudicate a specific legislation created for the system. In fact, the creation of an international adjudicative body by a new authentic international court would contribute to the legitimacy of international law.<sup>42</sup>

In response to the above mentioned concerns of the proliferation of international adjudication, it is evident that the creation of a tribunal specialized in dealing with international terrorism would not effect the international legal order, but, on the contrary, would be an effective and important development in international law. Granted there may arise concerns as to whether or not an international court or tribunal of this nature may be effective due to political, social, or economic factors. All courts, even pre-existing international adjudicative bodies have experienced many difficulties. The ICJ, for example, has experienced difficulties in achieving compliance with its decisions, such as that of the case between Nicaragua and the United States.<sup>43</sup> Although the concern as to whether the creation of a new international adjudicative body will have problems will not be dealt with in this paper, it does address a very important issue that requires further investigation and exploration.

### **Conclusion:**

Should terrorism be adjudicated under national law? At the international level that terrorism has reached, this seems unlikely. Would it be preferable to adapt international terrorism into another pre-existing adjudicative body? That has been tried and ignored. Will the creation of yet another tribunal create any problems to international law? This is an important question that needs to be addressed, particularly due to the inability of present mechanisms to create promising solutions for the situation at hand. Perhaps the core of this question has been addressed, in some manner, in this paper.

I have addressed to some length the limits of international law in dealing with the area of international terrorism, including the lack of legislation on the subject matter as well as the nature of international law today as an instrument of states. Despite the inability of delving deeper into the boundaries of international law in this particular analysis, I have managed to outline certain developments and trends that give rise to a potential progress in the plane of international law. There has been a trend towards the involvement of non-state actors, which eventually could increase dramatically to include terrorists as subjects of international law. I have also attempted to illustrate a trend in the creation of international adjudicative bodies, regardless of their character, as an outcome of war. With the War on Terrorism in progress, can we expect to see the development of new international adjudicative bodies? I believe that history tends to repeat itself, and that the trend will remain. On that note I stress that this is merely a



hypothesis based on a reoccurring trend. With the proliferation of international adjudication, the trend is exemplified. The world has witnessed a lack of response to the problem of international terrorism, and in fact the aggravation of terrorism, through the states' constant reliance on the use of force, and calls on the international community to find new peaceful means to resolve and suppress these emerging threats. All pre-existing mechanisms, however, do not seem viable to achieve these end goals.

David Kennedy argues that international law is “a set of particular human projects situated in time and place.”<sup>44</sup> We have come to a new time in history, one that is haunted by the threat of international terrorism, and the lack of legal responses for resolving such threats under the umbrella of international law. In this new time we must create a new human project, one that has not yet manifested itself. With this new project perhaps we can eliminate this threat, or at least to some degree, weaken its influence, so that we may shed some light on hope: hope that the international community is willing to come together and reach a consensus to create what might be a plausible and effective solution - willing to create an international adjudicative body ready and fit to handle the threat of international terrorism. Some say this will never happen, and it may never happen. I do not claim to offer a solution to all the world's problems, but I do propose another means to accomplish peace. I only wish to present a viable solution that may, or may not, motivate and inspire policy makers, and perhaps the international legal order in general, to consider possible alternatives to the use of force, and a greater hope and faith in adjudication. I tend to hold strongly to what Francis Bacon has ever so eloquently pointed out, that “if we are to achieve results never before accomplished, we must employ methods never before attempted.”<sup>45</sup>

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<sup>1</sup> B. Kingsbury, “Is the Proliferation of International Courts and Tribunals a Systematic Problem?” 31 *New York University Journal of International Law and Policy* 679 (1999)

<sup>2</sup> R. Bilder, “An Overview of International Dispute Settlement, I.” *Journal of International Dispute Resolution* (1986).

<sup>3</sup> Article 2(3) of the United Nations Charter

<sup>4</sup> Mary Ellen O’Connell. “Introduction.” *International Dispute Settlement*. (2003).

<sup>5</sup> Schmid, A.P. (1993). “Defining Terrorism: The Response Problem as a Definition Problem.” In A.P. Schmid and R.D. Crelinsten (Eds.), *Western Responses to Terrorism* (pp.7-13). London: Frank Cass and Co.

<sup>6</sup> Damrosch, L. et al *International Law*, St. Paul, Minnesota, 2001 p. 1

<sup>7</sup> Schmid, A.P. (1993). Defining terrorism: the response problem as a definition problem. In A.P. Schmid and R.D. Crelinsten (Eds.), *Western Responses to Terrorism* (pp.7-13). London: Frank Cass and Co.

<sup>8</sup> US State Dept., *Patterns of Global Terrorism*, (Washington, DC: US Dept. of State, 1987), p.v.

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<sup>9</sup> Prevention of Terrorism (Temporary Provisions) Act of 1974; cited in E.F. Mickolus, *The Literature of Terrorism* (Westport, CT: Greenwood Press, 1980), p.295.

<sup>10</sup> United Nations Security Council Resolution 1373, adopted by the Security Council at its 4385<sup>th</sup> meeting, on 28 September 2001.

<sup>11</sup> United Nations Security Council Resolution 1368, adopted by the Security Council at its 4370<sup>th</sup> meeting, on 12 September 2001.

<sup>12</sup> Byers, M. "Terrorism, the Use of Force and International Law after September 11," 51 *ICLQ* (2002) pp. 401-414

<sup>13</sup> Cassese, A. "Terrorism is Also Disrupting Crucial Legal Categories of International Law", 12 *EJIL*, No. 5, pp. 993-1001

<sup>14</sup> See A/CONF.183/C.1/L 27; A/CONF.183/C.1/L 27/Rev 1.

<sup>15</sup> Greenwood, C. "International Law and the Pre-emptive Use of Force: Afghanistan, Al Qaida, and Iraq," 4 *San Diego International Law Journal* 7 (2003).

<sup>16</sup> P. Sands, *Turtles and Torturers: The transformation of International Law*, 33 *New York Journal of International Law and Politics* (2001).

<sup>17</sup> See generally, J. G. Merrills, *International Dispute Settlement* (3d ed. 1998).

<sup>18</sup> See the Statute of the Permanent Court of International Justice, available at: <http://www.mfa.gov.tr/grupe/ed/eda/eda15e.htm>.

<sup>19</sup> Damrosch, L. et al *International Law*, St. Paul, Minnesota, 2001 p. 820

<sup>20</sup> See International Court of Justice, available at <<<http://www.icj-cij.org>>>.

<sup>21</sup> R. Mackenzie & P. Sands, *International Courts and Tribunals and the Independence of the International Judge*, 44 *Harvard International Law Journal* (2003).

<sup>22</sup> Cesare P.R. Romano, *The Proliferation of International Judicial Bodies: The Pieces of the Puzzle*, 31 *N.Y.U.J. INT'L L. & POL.* 709, 710, 711-23 (1999).

<sup>23</sup> The International Criminal Tribunal for Rwanda was established after the commission of experts formed by the Security Council to investigate violations in that civil war recommended such a tribunal. United Nations Security Council Resolution 935, adopted by the Security Council at its 3400<sup>th</sup> meeting (1994).

<sup>24</sup> Gerard Prunier, *The Rwanda Crisis: History of a Genocide, 1959-1994* (New York: Columbia University Press, 1995), p. 211.

<sup>25</sup> Makua Wa Mutua, *Never Again: Questioning the Yugoslav and Rwanda Tribunals*, 11 *Temple International and Comparative Law Journal* (1997).

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<sup>26</sup> C. Jalloh, Immunity from Prosecution for International Crimes: The Case of Charles Taylor at the Special Court for Sierra Leone, ASIL Insights: <http://www.asil.org/insights/insigh145.htm> (October 2004).

<sup>27</sup> P. Sands, Turtles and Torturers: The transformation of International Law, 33 New York Journal of International Law and Politics (2001), p. 9.

<sup>28</sup> Helfer & Slaughter, 107 Yale L.J., supra note \_\_, at 300-14; see also J.H.H. Weiler, A Quiet Revolution: The European Court of Justice and Its Interlocutors, 26 *Como Pol Stud* 510, 520-21 (1994)

<sup>29</sup> see Framework Convention on Climate Change: Report of the Parties on its Fifth Session, Annex II, FCCC/CP/1999/6 (Dec. 21, 1999), available at : <http://www.unfccc.int/resource/docs/cop5/06.pdf>

<sup>30</sup> Julie Mertus, Considering Nonstate Actors in the New Millennium: Toward Expanded Participation in Norm Generation and Norm Application, 32 *N.Y.U.J. Int'l L. & Pol.* 537 (2000).

<sup>31</sup> P. Sands, Turtles and Torturers: The transformation of International Law, 33 New York Journal of International Law and Politics (2001), p.10.

<sup>32</sup> See generally, J.G. Merrills, *The Development of International Law by the European Court of Human Rights* 12 (2d ed. 1993).

<sup>33</sup> B. Kingsbury, Is the Proliferation of International Courts and Tribunals a Systematic Problem? 31 *New York University Journal of International Law and Policy* 679 (1999)

<sup>34</sup> Michael Reisman, The Supervisory Jurisdiction of the International Court of Justice: International Arbitration and International Adjudication, 258 *Recueil des Cours* 9 (1996).

<sup>35</sup> Supra note 29

<sup>36</sup> Christine Gray & Benedict Kingsbury, Inter-State Arbitration Since 1945: Overview and Evaluation, in *International Courts for the Twenty-First Century* 55, 63-68 (Mark W. Janis ed. 1992).

<sup>37</sup> Y. Shany, *The Competing Jurisdictions of International Courts and Tribunals* (2003).

<sup>38</sup> Paul Szasz, General Law-Making Process 1 *United Nations Legal Order* (Oscar Schachter and Christopher C. Joyner, eds., 1995) pp. 35, 45-7

<sup>39</sup> Pierre-Marie Dupuy, The Constitutional Dimension of the Charter of the United Nations Revisited, 1 *Max Planck Y.B.U.N.L.*1 (1997).

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<sup>40</sup> See Jonathan Charney, *Is International Law Threatened by Multiple International Tribunals?*, 271 *Recueil Des Cours* 101 (1998); Philip Jessup, *Do New Problems Need New Courts?* 65 *Proc. Amer. Soc. Int'l Law* 261 (1971).

<sup>41</sup> Craig Scott, *Bodies of Knowledge: A Diversity Promotion Role for the UN High Commissioner for Human Rights*, in *The Future of Human Rights Treaty Monitoring* (Philip Alston & James Crawford eds., forthcoming 2000)

<sup>42</sup> Thomas Franck, *The Power of Legitimacy Among Nations* 24 (1990)

<sup>43</sup> *Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. U.S.)* 1986 I.C.J. 14.

<sup>44</sup> David Kennedy, *The Disciplines of International Law and Policy*, 12 *Leiden J. Int'l L.* 9, 18 (1999).

<sup>45</sup> Horgan, J. *The Social and Psychological Characteristics of terrorism and Terrorists*. In T. Bjorgo (ED.). *Root Causes of Terrorism: Proceedings From an International Expert Meeting*. Oslo: Norwegian Institute of International Affairs and Norwegian Ministry of Foreign Affairs. (2003).