




## SCL Lecture Lessons from Hybrid Courts

The T.M.C. Asser Instituut hosted in June 2016 an SCL lecture on 'Lessons from Hybrid Courts' and the launch of the book *The Extraordinary Chambers in the Courts of Cambodia – Assessing their Contribution to International Criminal Law*, with a keynote lecture on the Kosovo Specialist Chambers. The book is the first comprehensive study that addresses both the jurisprudence and procedural aspects of the Extraordinary Chambers in the Courts of Cambodia (ECCC), and is part of T.M.C. Asser Press' International Criminal Justice Series.

Following introductory remarks by Dr Christophe Paulussen, Senior Researcher at the T.M.C. Asser Instituut, the editors of this volume introduced the book. Mr Simon M Meisenberg, Chef de Cabinet of the Kosovo Specialist Chambers, and Dr Ignaz Stegmiller, Coordinator for International Programs of the Faculty of Law at the University of Giessen, together described the idea for the book and its inception, which sprung from their observation that there was no all-encompassing volume detailing the work, contributions and legacy of the ECCC. The desire to explore this manifested itself in a conference held in September 2012 on the topic which subsequently formed the basis for the book itself.

Mr Meisenberg and Dr Stegmiller then briefly set out the contents of the book, which is structured into three parts: first, it assesses the history, establishment, judicial independence and legacy of the ECCC; second, it addresses its contributions to substantive international criminal law; and finally, it examines the ECCC's contributions to international criminal procedure. Issues that the volume highlights include the jurisprudence of the ECCC in relation to judge disqualification, the approach taken to addressing sexual violence, the ECCC's controversial stance in relation to the doctrine of 'joint criminal enterprise', and how it has addressed charges concerning alleged 'grave breaches' of the Geneva Conventions. In terms of the procedural section, the book, *inter alia*, comparatively examines the ECCC's inquisitorial system in contrast to adversarial systems, critically analyses the severance of charges in Case 002, and discusses victim participation in the ECCC process. Finally, Mr Meisenberg concluded that one of the most important lessons learnt from the ECCC surrounds its financing, namely hybrid courts and tribunals need adequate and reliable sources of funding in order to be able to function and to enable their staff to work effectively and efficiently.

Following the discussion of the book, Dr Fidelma Donlon, the Registrar of the Kosovo Specialist Chambers, delivered the keynote address. Dr Donlon began by congratulating the editors on the success of the book which presents a range of useful information that can be transferred to the new Specialist Chambers.




In so doing, she noted that both the ECCC and the Specialist Chambers mark several aspects of the much greater international criminal law and international humanitarian law framework that has been evolving since the end of the 20<sup>th</sup> century. Dr Donlon endeavoured to address three broad themes in her lecture: the establishment of the Special Investigative Task Force (SITF); the legal establishment of the Specialist Chambers and the Specialist Prosecutor's Office; and the jurisdiction and structure of the Specialist Chambers.

The inception of the Kosovo Specialist Chambers can be traced to efforts made by former ICTY and ICTR Prosecutor Carla del Ponte and former EU Special Rapporteur Dick Marty, who initially raised awareness of alleged crimes committed by the Kosovo Liberation Army (KLA) during the conflict in Kosovo in the late 1990s. The Council of Europe Parliamentary Assembly report generated by the Special Rapporteur ultimately led the EU and its Rule of Law Mission in Kosovo (EULEX) to establish the SITF, whose mandate was to continue investigations into the allegations found within the Report.

In 2014, former Prosecutor Clint Williamson stated that the SITF had found compelling evidence that senior KLA officials had allegedly committed crimes but that an indictment could only be filed upon the establishment of an appropriate judicial mechanism that could guarantee a fair trial and adequate security for witnesses. This statement spurred the Exchange of Letters between the then President of Kosovo and the EU's High Representative through which negotiations were commenced. The laws necessary to create the Chambers and to amend the constitution were adopted by a two-thirds majority of the Kosovar Parliament in August 2015. These laws echo five key points that were discussed in the Exchange of Letters, namely: the court may have a seat outside of Kosovo; all sensitive documents and records will be stored outside of Kosovo; Kosovo will dedicate separate chambers within its existing court structure to address these crimes; the Rules of Procedure and Evidence will be adopted by a plenary of judges; any sentences handed down may be served outside Kosovo; and the staff of the Chambers will be international.

Dr Donlon then turned to the jurisdiction and structure of the Specialist Chambers. In terms of the temporal jurisdiction, the Chambers may address alleged crimes taking place between 1998 until the end of 2000. Its geographical jurisdiction is limited to crimes commenced or committed in Kosovo. Its personal jurisdiction is limited to Kosovar citizens and nationals from the former Republic of Yugoslavia or crimes committed against Kosovar citizens and nationals from the former Republic of Yugoslavia.

The Specialist Chambers are made up of two institutions: the Specialist Prosecutor's Office; and the Specialist Chambers and Registry. The Specialist Prosecutor's Office shall be a separate institution with a defined role and mandate. The Specialist Chambers themselves will work within the structure of the existing Kosovar court system but will have primacy over it. Judges will be nominated by EU Member States and contributing Third States, interviewed by a selection panel and appointed to a roster of judges through the Appointing Authority. Thereafter, the President will call the judges on the roster to serve as required pursuant to Rules of Assignment. The Registry will be responsible for the overall administration of the Chambers as well as the provision of judicial support services. This includes departments that focus on court management, witness protection, translation, victim participation and defence services.



The panel discussion was followed by an informative Q&A session, moderated by Dr Christophe Paulussen. The questions considered issues such as when the Kosovo Specialist Chambers will be set up, how victims can participate in its proceedings and how impartiality will be ensured. The evening was concluded by Mr Frank Bakker (T.M.C. Asser Press), who thanked everyone who contributed to the book, as well as Dr Donlon, and who invited the audience for a reception, kindly offered by the editors and T.M.C. Asser Press.