Rule of Law Reform in Post-Conflict States: Introduction

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States that are in transition after a violent conflict or an authoritarian past face daunting challenges in (re)establishing the rule of law. The legal system may be in need of rebuilding or reinvention to bring a climate of lawlessness to an end and create the conditions for a more stable future. The culture of impunity, lack of accountability, lack of rights protection, and, more generally, lack of respect for the rule of law that may have been pervasive in societies before undergoing the transition from autocracy to democracy often persist during the transition period itself. To the extent there is law, local 'strongmen' may be above it, or the law is co-opted by power to serve its ends. During the transition from violence or oppression, the pre-existing legal system, in whole or in part, may be temporarily suspended or permanently dismantled, and with it any semblance of the rule of law.

The rule of law challenges that characterize this period may include generalized insensitivity toward the plight of victims of the conflict or the deposed authoritarian regime; major criminals may get away with reduced sentences or outright impunity, ringleaders of criminal enterprises may escape their due because domestic legislation is not adequately equipped to address such modes of responsibility as command responsibility or joint criminal enterprise; the economic and social rights of marginalized groups may be insufficiently protected; judicial review of executive decisions may be non-existent; and the political branches may routinely interfere with the affairs of the judiciary.

During transition from one system to another, different layers of law may moreover be operational at the same time, creating confusion as to which legal standard should apply. Such heterogeneity of law, or legal pluralism, hardly furthers the goal of legal certainty so essential for dealing with past abuses on
the basis of the rule of law as opposed to arbitrariness. If there is no continuity of the domestic legal system, the break with the troublesome past may entail impermissible retroactivity of new law. The new regime may also need to grapple with abuses that were committed under color of law in the old regime, by persons obediently doing their duty. Finally, abuses may have been committed in a legal vacuum with no law prohibiting the acts at their time of commission.

This volume examines several recent attempts which states have made to buttress the rule of law by receiving or importing international law into the gaps created in domestic law in a transition period. More particularly, the volume considers the practice of empowering national courts to give effect to international law in order to protect the rule of law in post-conflict settings. Such situations present unique glimpses into ‘constitutional moments’ that often elevate the role of international law (notably international human rights law and international criminal law) in a domestic legal order. Indeed, the international community hopes that this increased role may help stabilize the legal order, international criminal law) in a domestic legal order. Indeed, the international vacuum protects fundamental rights, and prevent a return to lawlessness. It forms a key obediently doing their duty. Finally, abuses may have been committed in a legal transition period. More particularly, the volume examines recent attempts which states have made to use the broader term ‘transitional’ or ‘post-authoritarian’ states. It is however not the political or economic transition that is not accompanied by violent conflict (cf Central and Rossiyskoy Federatsii, \textit{>the book primarily focuses on the role of domestic courts as actors of transition in post-conflict settings.}, see in this respect the emerging concept of \textit{just post-fellow, amongst others, L. Schie and R. Kiss, eds, \textit{Post Bellum: A Law of Transition from Conflict to Peace} (The Hague: TMC Asser Press, 2009); T. De Backer, \textit{The Responsibility for Post-Conflict Reforms: A Critical Assessment of the Post-Bellum as a Legal Concept.} \textit{Vanderbilt Journal of Transnational Law} 41 (2008)). The book primarily concerns ‘South’ as an ‘armed conflict’ in the sense of international humanitarian law. \textit{See on the definition of ‘armed conflict’ for such purposes ICTY Appeals Chamber, \textit{Prosecutor v. Dusan Dzokic} Thela, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, IT-94-ARB/2, para. 70 (stating that an armed conflict ‘exists whenever there is a resort to armed force between States or proximately armed violence between governmental authorities and organized armed groups or between such groups within a State’). Also in such states as South Africa and Russia, which are studied in this book, did an armed conflict take place, as domestic courts in those states have failed to point out. See in respect of Russia, Constitutional Court of the Russian Federation 31 July 1995, (Sobranie zakonodatelstva Rossiyskoy Federatsii, 1995, No. 33, Article 5254 (holding that a non-international armed conflict took place in Chechnya), and in respect of South Africa, Cape Provincial Division, South Africa 3 November 1987, \textit{v. Peto}, 1988 (3) South African Law Reports 2 (rejecting the application of Article 11 of Additional Protocol No. II to the Geneva Convention, but implicitly accepting the existence of an armed conflict between the African National Congress (ANC) and the white minority regime of South Africa). But because the challenges of transition are much more multifaceted in respect of such states, it is probably more accurate to use the broader term ‘transitional’ or ‘post-authoritarian’ states. It is however not the ambition of this book to discuss the role of domestic courts in states that are in a time of political or economic transition that is not accompanied by violent conflict (eg Central and Eastern Europe, Brazil, India, China, and so on).


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5 UNSC, Report of the Secretary-General on the role of law and transitional justice in conflict and post-conflict societies (S/2008/484) (10 July 2008); para 15.

6 Weimar Constitution, Article 13, para 1; A. Casser, Modern Constitutions and International Law, 151 Recueil des Cours 307 (1985).

7 Article 24(1) of the 1949 German Constitution, Article 10 of the Italian Constitution; A. La Porgona and P. Del Duca, Community Law, International Law and the Italian Constitution, 79(5) American Journal of International Law 602 (July 1985); Cassese, supra note 5.

8 Cassese, supra note 5.

9 This definition is a relatively ‘thick’ one, including adherence to international human rights standards. In the Concluding Observations at the end of the volume, we address the extent to which thicker or thinner versions have been deemed adequate for the practice of domestic courts in the states discussed in the
individual chapters. Prima facie, though, this thicker definition in post-conflict or transitional situations is not without merit, as Beaulac notes in his chapter:

More importantly, too thin an account of the rule of law, with no basic human rights content for instance, could well be counter-productive as the reinforcing measures may lack apparent legitimacy and, as a result, might be considered unsatisfactory by people in societies [...] where rule of law performative power ought to contribute to moving away from the old oppressive governance system to a new constitutional structure arrangement acceptable to people.

Attempts to strengthen the rule of law by importing international law often seek to replace the thin conceptions of the rule of law that served the outgoing authorities with a novel, thicker interpretation that is protective of individual rights and the separation of powers. International law as 'thickening agent' may entail giving the individual a right to a remedy for human rights violations, provide for reparations of victims of the conflict, impose responsibility of superiors, reject amnesties or mitigated sentencing, and grant social and economic rights to disenfranchised populations. In times of transition, domestic courts may be able to call upon such international law norms to settle disputes and ensure accountability, thereby perhaps transforming what a society understands as its 'law', and confronting it with how it understands its fundamental values.

The use of the term 'importing international law' does not imply that the use of international norms in national legal orders is a one-way process by which the 'receiving' states choose (or are forced) to import international rules. Often the contrary appears to be the case, and much of the literature on rule of law promotion by states and international institutions takes an 'exporting' rather than 'importing' approach. While we recognize and indeed will, in the chapters that follow, pay ample attention to the activities of international institutions that seek to strengthen the rule of law in particular post-conflict situations, in the final analysis the effect of such strategies, both in legal and practical terms, depends on the 'receiving' state—hence the chosen perspective of the importing state. We will return to this issue in the Concluding Observations.

Our focus on national courts rather than, more broadly, on the importation of international law in national legal orders, comes about by the courts' dynamic involvement in the application of international law in post-conflict and post-authoritarian societies. Through constitutional, legislative, or self-empowered mandates, and often supported by international actors (the UN and other intergovernmental organizations, other states, and non-governmental organizations (NGOs)), national courts seem to emerge in situations of transition with an enhanced power to use international law to reconcile the measures that are needed for stabilizing the system with the standards of fairness and reasonable expectations of the citizens. They can be seen as using this power to keep the political branches in check, notably through the application of human rights law, but also as part of criminal law responses to questions of transitional justice. Such empowerment not only redefines a fundamental constitutional arrangement of the state, but at the same time supports an international rule of law.

International law, traditionally conceived as a set of rules for regulating the relations between states, has come also to serve as a set of rules for reconciling new and old versions, or identities, of the same state inside its borders. And, just as a state may pass through many constitutional moments in its national history, we in this volume refer to it as an 'international constitutional moment' when international law is imported, or injected, as the instrument for bridging a rule of law gap at domestic level. We focus on the role of the courts as guardians of tradition and as interpreters—in the local legal vernacular—of their own law in transition. We are interested in the cross-influences of domestic law and international law that are highly relevant for international actors in the role of law field as they continue to build methods and practices to be replicated elsewhere.

In an international constitutional moment, facilitated by granting domestic courts the power to apply international law, international rule of law values may be transmitted from the international to the domestic level, helping to stabilize the legal order, contributing to the protection of fundamental rights, and protecting the separation of powers. An example of such stabilization may be the crowding out of various domestic laws after the Bosnian Constitutional Court, spurred on by the Organization for Security and Co-operation in Europe (OSCE), in 2007 recommended that local courts apply the BiH Criminal Code, which was based on international law. This should bring more legal certainty.

International law itself is also impacted by these local developments, as it depends increasingly on domestic implementation for its effectiveness. However,

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9 S. Beaulac, Lost in Transition? Domestic Courts, International Law and Rule of Law in the Goran (in this volume at p 30).
10 Cf B. Tribe, Transitional Justice (Oxford University Press, 2000) (referring to law transforming the prevailing meaning of legality in transitional situations).
11 See OSCE, War Crimes Trials before the Domestic Courts of Bosnia and Herzegovina: Progress and Obstacles (March 2005), p 20, available at www.oscebih.org/documents/1497-eng.pdf (noting 'considerable lack of clarity in relation to which criminal code will apply in pending war crime cases').
12 Constitutional Court, Abdulahmet Muhato, AP-17/316/06, Decision on Admissibility and Merits (30 March 2007).
13 The relevant bodies of the Federation of Bosnia and Herzegovina have so far not heeded the Constitutional Court's call. The process of harmonization may be accelerated by a 2010 amendment to the Criminal Code of Bosnia and Herzegovina. Article 111 of this Code now provides that the relevant bodies 'shall harmonise their respective criminal legislation with this Law within 90 days as of the day when the Law comes into effect' (emphasis added).
optimism should be guarded, as the willingness and ability of domestic courts to apply international law may be limited in various ways, like the chapters in this book show. Their ability may be hampered by lack of full independence, as judges may have been appointed by and served under the old regime, or, if newly appointed, may either have too strong a bias against the participants of the old order, or fear upsetting the still precarious stability. It is precisely for such reasons that the international community has taken an interest in internationalizing national courts and imposing other conditions that aim to insulate them from political pressures; however, such involvement is not always able to overcome domestic obstacles.

The treatment of international law by domestic judges indeed raises many fundamental questions. Should judges with no formal international law training or experience be empowered to introduce it in a volatile power vacuum? Does the empowerment of national courts through the application of international law not risk a backlash as the political power, faced with politically inconvenient international law-informed judicial decisions, may seek to restrict the effectiveness of judicial independence and judicial power, eg by refusing to act upon judicial injunctions, or by curtailing the courts’ ability to invoke international law? In some cases, the judiciary may prove far more progressive-minded than the political branches are willing to be, creating a mirage of rights guarantees for individuals on the basis of international conventions, which the executive or legislative branches are unwilling to take measures to enforce. Expectations are raised and dashed swiftly. Where domestic courts are both empowered and willing to apply international law, other hindrances may stand in the way. Willingness is no guarantee that international law will be applied accurately, and an inaccurate application of international law will do little to further its rule of law-enhancing potential. The risk of misinformed application of international law looms particularly large in cases where domestic courts attempt to shoe-horn international law into domestic concepts, for instance in the attempt to safeguard the domestic principle of legality in criminal proceedings relating to international crimes. International law may in such cases be distorted and ineffectual.

In the light of the above-mentioned hopes and potentials, on the one hand, and the various barriers and limitations on the other, the chapters in this volume examine in detail attempts that were made in certain significant post-conflict or post-authoritarian situations to strengthen the domestic rule of law with the aid of international law. We consider such a study to be overdue. While a growing scholarship has examined the role of international law in transitional situations in general and as part of transitional justice situations in particular, or the role of international tribunals and commissions, not enough systemic attention has been paid to the empowerment of domestic courts in such situations. The issue is a timely one. As the chapters in this volume neared completion in early 2011, a series of protests and uprisings in North Africa and the Middle East have launched some states into transition - hopefully to a peaceful and stable future. These transitions or constitutional moments are occurring under the scrutiny not only of the UN and powerful states, but of the entire world community, interconnected as never before. Urgent questions are arising as to what rules will be applicable and acceptable for courts in those countries to use once they set about to reckon with the past while setting standards for the future. As the case studies in this volume show, international law may serve them as a tool for reconciling the demands for new rights and responsibilities with due process and other rule of law requirements.

The book identifies how attempts at legal empowerment have been carried out and how successful they have been in numerous different situations around the globe. In selecting situations, the book should be seen as eclectic, and not as exhaustive. It is not the aim of the editors to cover every situation in which domestic courts have, or conspicuously have not, relied on international law after a period of violent conflict. There are for instance no contributions regarding Latin America. Efforts at tackling the rule of law deficit in Latin America, and the role of domestic courts in the context of post-conflict and post-authoritarian transitional justice, have however been rather well-documented recently. Notably, after foreign prosecutors and courts targeted former Chilean President Augusto Pinochet, courts throughout Latin America have shown increased willingness to bring former dictators and their henchmen to justice for human rights violations and corruption, thereby heavily relying on international law.
In Colombia, an ambitious ‘Justice and Peace Law’ was adopted in 2005,18 which reserves an important role for domestic courts in the Colombian transitional justice process.19 Also, various Latin American states have recently attempted to partly correct historical wrongs perpetrated against indigenous peoples, by granting them more extensive collective rights based on international (soft) law, that might be justiciable in domestic courts.20

Each chapter of this book considers, to the extent relevant, the following questions:

1. What was the constitutional moment that allowed for an increased role for national courts in applying international law?
2. What was the formal manifestation of the constitutional moment? A new constitution? New legislation? New institutions? The same law and institutions, but a new political or judicial will? A new partnership with international institutions?
3. What was the scope of the enhanced practice of local courts to apply all of international law, or only human rights, or some human rights, criminal law, and if so, what parts? What were the sources of international law: only treaty law, or also customary law, general principles, international or foreign legal decisions?
4. How did the possibility to give international law a stronger role come about? Was it a ‘bottom-up’ change prompted by domestic actors, and if so, which ones? Through the intermediacy of international institutions? Was there a significant role played by NGOs, for instance, in bringing international law arguments to the courts’ attention? To what extent that international actors played a role, what was their agenda?
5. How did domestic courts contextualize international law and adjust it to the particular nature and problems of the situation of transition in question? Did frictions with the national legal context occur (legal transplants)? Did the empowerment of national courts to apply international law change the power relations between the courts, the legislature and the executive? Has there been evidence of backlash from the political branches seeking to recapture power from the courts, thereby limiting the role of international law? Were the courts in question up to the task (in terms of quality, skills) and was the wider legal system and the affected population supportive of an effective application of international law?
6. What was the legacy of the empowerment of the courts in terms of sustained application of international law throughout the legal system, eg norm-penetration into local law? Did changing the place of international law in the domestic sphere achieve the purpose of ‘improving the rule of law’ or human rights, and can any wider effects be discerned outside the courts? Was the application of international law ultimately accompanied by an improvement in the situation of the persons international law purports to protect? Was international law possibly being used to appease the outside world rather than improve matters at home? Or was the reach of norm-entrenchment insufficient to result in concrete improvements?

In Chapter One, Stéphane Beaulac lays the background for the more empirical chapters by considering the performative power of the rule of law that has been at work for some time at the international level, notably in UN promotion efforts, in both development and transition fields. This conceptual chapter explores the possible heuristic models for the role of law to help discuss the hypothesis of the empowerment of domestic courts, at a ‘constitutional moment’, through recourse to international law, in post-conflict and post-dictatorial states. The hypothesis involves the relocating of the legal character of normativity, in a separate space, beside the international-national axis. After reviewing the debate around the formal and substantial versions of the rule of law, the argument goes past this thin-thick spectrum. Hence the suggestion of an à la carte approach to the concept, which is meant to provide an organizing structure for the relevant rule of law values, actual and aspirational, within a new or true stable constitutional arrangement. In the end, no exhaustive laundry list of values is proposed, but merely tentative non-negotiable elements likely to be appropriate to all societies in transition. Although imperfect, this à la carte model constitutes a heuristic tool to guide our reflections on the role that domestic courts in states in transition can and should play by means of international law.
In Chapter Two, Sergei Marochkin examines how domestic courts in Russia implemented and applied rules of international law before and after the end of the former Soviet Union. Russia has undergone substantial changes during the last two decades, mainly triggered by two critical moments, as set out by the author. The first one was the dissolution of the Soviet Union in 1991 with Russia emerging as a separate state. The second critical moment was the confrontation between the former parliament and the presidential power in October 1993, leading to the formation of a new government and the adoption of a newly drafted constitution. These events had implications and repercussions for the whole of Russia’s political, economic, and legal systems, as is also displayed by the practice of domestic courts regarding the application of international law; especially, the rule of law. Based on these observations, the chapter analyses the role taken by international law in the Russian legal order – comparing the Soviet and post-Soviet era.

The chapter by Evelyne Schmid examines the ability of the South African Constitutional Court to apply economic and social rights and its approach towards the definition of the rule of law. When adopting the current impressive Constitution following the Apartheid Regime, the drafters aspired to a substantive conception of the rule of law that would break with the abusive past. The chapter analyzes the effects of empowering domestic courts to apply international legal principles after liberation from an oppressive rule. Especially, it focuses on the success of the constitutional entrenchment of economic and social rights in South Africa’s legal system through incorporation in the domestic Bill of Rights, the ‘transformative constitutionalism’. The constitutional entrenchment of economic and social rights in the Constitution did display positive results; however, where they were greatest, they have to be seen in conjunction with complementing broader campaigns and cannot be isolated when looking at ground-breaking social transformations as a whole.

In Chapter Four, Rishikesh Wagle explores the Nepalese approach to international law, focusing on human rights obligations. Following the armed rebellion launched by the Communist Party of Nepal (Maoist) from 1996 to 2006, and the subsequent peace accord formally ending the armed conflict, courts increasingly have been confronted with claims concerning the social, economic, and psychological damage caused to Nepalese society. In that respect, the absence of a supportive legal framework – international customary and treaty law being not directly enforceable – has proven difficult for the application of international provisions. The Nepalese Supreme Court, in its groundbreaking judgment in Dhakal in 2007, provided a solution and broke with its previous approach. The author provides an overview of the general applicability of international norms in post-conflict Nepal, and especially focuses on the Supreme Court’s answer concerning the applicability of human rights in Dhakal. As the author concludes, the Court found that, although treaty norms lack direct enforceability, those instruments – which were very liberally interpreted – can have an indirect influence on the Nepalese legal system.

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Enlightened by the analysis provided by the authors, it becomes clear that domestic courts in Russia, South Africa, and Nepal have played a crucial role in shaping their respective legal frameworks. The application of international law has been instrumental in addressing the challenges posed by post-conflict situations and human rights violations. These cases highlight the importance of a supportive legal framework and cooperation between domestic and international courts to ensure justice and the rule of law in challenging times. The insights presented in this document underscore the ongoing evolution of legal systems in confronting complex issues and the need for continuous adaptation and innovation.
and abolishing capital punishment in 2007; therewith, the standards required by Rule 11bis of the Statute of the International Criminal Tribunal for Rwanda (ICTR) were met and transfer for trial under Rwandan law made possible. Thirdly, the author argues that in a concurrent process, international law has shaped the Rwandan approach to post-genocide justice, and the domestic courts’ practice has shaped international law in turn. By way of conclusion, it can be extracted that international law in Rwanda, when examined in context, has been both used and resisted; further, omitting to take into account domestic courts’ need and purpose might contribute to impairing the stirre for stronger national institutions.

The next set of chapters focuses on different aspects of the prosecution of war crimes and the application of human rights in post-conflict Bosnia and Herzegovina. In Chapter Eight, Antoine Buyse discusses the role of the Bosnian Human Rights Chamber, set up under the Dayton Peace Agreement as a mixed institution combining domestic and international elements, in supervising respect for human rights by the parties involved in the conflict. Buyse focuses specifically on how the Chamber applied substantive ECHR rights in relation to property and housing rights, and draws attention to how the Chamber has developed these rights in a flexible manner that was tailor-made to the particular Bosnian post-conflict context, such as post-conflict evictions and the particular concept of ‘occupancy rights’ under former Yugoslav law. Through directly applying ECHR norms, a similar approach to that of the European Court of Human Rights (ECHR) could be adopted, and the use of leading cases proved successful for reconciling the requirements of justice, efficiency, and the restoration of the rule of law. Still, after the gradual dissolution of the Human Rights Chamber and integration into the Bosnian Constitutional Court, the Bosnian legal system continues to face challenges in upholding the rule of law.

In Chapter Nine, Katerina Uhříková examines the process of rebuilding the role of law in Bosnia and Herzegovina. While the primary role of the local population in that respect is acknowledged, the author also admits that this option may not always be available, and external assistance may be needed. Building on the efforts of the international community in Bosnia and Herzegovina and its major role during the process of reconstruction, the contribution concentrates on the question whether such rule of law efforts were and could have been successful, springing not from local linkage but rather from an external imposition. The chapter especially examines two aspects or goals of the rule of law: providing efficient and impartial justice, and upholding human rights. As international law plays a major role in that regard, both the process of empowering domestic institutions to apply international law as well as the actual application of international law are analyzed. To this effect, the involvement of the international community in the constitutional process is examined, including developments leading to the conclusion of the Dayton Peace Agreement and the adoption of the current constitutional framework. From this point of departure, the author explores the effects on harmonization of criminal legislation and the implications for prosecution of international crimes, having regard especially to the War Crimes Chamber (WCC). In particular, the focus is on its relationship with the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the domestic application of the concept of Joint Criminal Enterprise (JCE), providing two case studies where the BiH judiciary sought to justify and clarify the application of this ‘legal transplant’. The conclusion evaluates the international community’s engagement in the application of international law as a means to improve and deliver justice to the victims of the war in BiH.

In her chapter on the prosecution of war crimes in Bosnian cantonal and district courts, Sanja Popović explores the judicial inadequacies that have become apparent through case law and proposes potential ways for rectification. With the establishment of the ICTY, an international body was set up specifically designed to bring to justice those who committed serious violations of international humanitarian law during the conflict in the former Yugoslavia since 1991. Concurrently, Bosnian local courts were empowered to try those cases that concerned ‘less serious’ war crimes. The role of the local courts will, however, considerably increase once the ICTY’s mandate expires, by taking into account the tangibility of an assessment of local courts’ modus operandi and the impossibility of an operation of the rule of law – be it a thick or a thin concept – without the desire to be bound by the respective laws, the contribution examines some of the decisions taken by Bosnian cantonal and district courts. Particular attention is paid to the preservation of international criminal law norms and standards, and its impact on the receptiveness of the judicial branch. In some instances the practice of Bosnian courts displays their failure to follow international precedents, and at times it has been proven to be irreconcilable with basic principles of war crimes prosecution.

The last contribution on war crimes prosecution in the former Yugoslavia, by Sharon Weill and Ivan Jovanović, examines the fraction of the Serbian War Crimes Chamber (WCC) in Serbia. Remarkably, the Chamber – being established within the District Court of Belgrade – constitutes one of the very few courts in the world that, shortly after the ending of a conflict, is prosecuting its own nationals on a systematic scale. The first part of the contribution examines the background of the WCC. As another establishment constituting an alternative to the ICTY, the second part provides a critical analysis of the first decisions issued by the Chamber during its first six years of operation, evaluating the WCC’s approach to applying international law in practice and its importance as an international player in the wider context of the international rule of law. As the latter is dependent on the Chamber’s objective ability to apply international law – which, in practice, seems especially parochial as to the application of
international humanitarian law—and its subjective political willingness to do so, the former represents one of its essential elements.

The chapter by Eyal Benvenisti and Michal Saliternik focuses on the jurisprudence of courts in liberated territories concerning the laws and administrative acts that were promulgated and applied by the occupying power. An analysis of a varied range of case law shows that, by tendency, national courts in the aftermath of an occupation prioritize the transitional needs of their societies—at least, in cases of conflict—over addressing questions of international legality. The 'transitional bias' produced by post-occupation courts is examined by reference to case studies originating from several jurisdictions, under occupation during World War I, the Namibian Supreme Court’s ruling in the Cultura 2000 case, the imposition of capital punishment on Saddam Hussein by the Iraqi High Criminal Tribunal, and cases from East Timor and Kosovo in which prescriptive measures of UN territorial administrations were scrutinized by national courts. Inferring from the case studies, the chapter offers insight into the various forms of 'transitional bias', ranging from post-occupation justice and the transitional processes as perceived by domestic institutions over the latter's struggle for reputation to the institutional aspects of post-conflict situations. The chapter concludes by suggesting that, given the countervailing concerns, it would be preferable to distinguish between *ex ante* and *ex post* consideration, and it criticizes the courts for invoking the laws of occupation as the basis for their *ex post* findings, thereby contributing to distorting this law.

Yael Ronen addresses the context of post-conflict restructuring of the legal system, where the use of international law is often perceived as a stabilizing factor, contributing to the protection of fundamental rights and protecting the separation of powers by imposing a more stringent standard for protection of human rights than domestic law does. However, international law operates at various levels and in various contexts, in some cases having a destabilizing effect on the domestic system. Moreover, the courts entrusted with applying international law, no less than other institutions, may abuse their power, and such abuse carries particular weight as it is carried out under the guise of law. This article concerns an incident in which the Court of Appeal of East Timor invoked international legal principles relating to the consequences of illegal annexation when determining the domestic law of East Timor under UN administration and after independence, without due regard to their implications in the field of human rights. Rather than enhancing the post-conflict reconstruction, this invocation risked destabilizing the emerging political and legal apparatus. While this attempt to bring about change was thwarted by the objection of the legal community and the legislature, the incident demonstrates that the recourse to international law must be discriminative so that it does not subvert the very purpose for which this law is invoked. The article describes the dilemma concerning the choice of applicable law in post-conflict East Timor, and the intended and unintended roles that international law has played in shaping that choice, noting the implications for domestic law of unqualified reliance on certain branches of international law. It also places the East Timorese experience in a wider context of post-conflict determinations of applicable law in light of international legal principles.

In the final chapter, the main connecting threads between the chapters are identified, and conclusions are drawn.