## CONTENTS

Prefa	ce		J
Intro	ductio	n	
	Edda and C	Kristjánsdóttir, André Nollkaemper Cedric Ryngaert	1
		nsition? Domestic Courts, International Law and Rule of	
Law S	À la C	arte'	
	Stéph	ane Beaulac	7
1.	Intro	duction	7
2.	The U	United Nations and the Rule of Law	9
3.	Interl	egality and International Rule of Law Complementarity 2	1
4.	The T	hin-Thick Rule of Law Spectrum and its Limits 2	5
5.	Rule	of Law À la Carte and Recommendations of the Chef	1
Inter	natior	nal Law in the Russian Courts in Transitional Situations	
	Serge	i Yu. Marochkin	5
1.	Intro	duction	5
2.	A Bri	lef Look at the Period Prior to the Breakdown of the USSR 3	6
3.	Tran	sition to a New State and Legal Order and to a New Constituiton 3	9
	3.1.	From "Putsch" in 1991 and the Breakdown of the USSR to the	19
		Adoption of the New Constitution of Russia	ın
	3.2.	The Constitution of Russia 1993 and International Law	
4.	The l	Role of the Courts in Entrenchment of International Norms in	12
		egal Order of Russia	-
	4.1.	The Norms of International Law as a Framework for Legislation	13
		and for its Implementation	tJ
	4.2.	The Norms of International Treaties in Determining the	4 5
		Applicable Law and as a Basis of the Decision in the Case	t
	4.3.	Generally Recognized Principles and Norms of International	4-
		Law in Judicial Decisions	±/
	4.4.		
		Organizations, Acts of International Conferences	5(

	4.5.	Treaties Without Participation of Russia	51
	4.6.	Rulings of the European Court of Human Rights (ECtHR)	52
5.	Con	clusion	56
		g the Rule of Law in Transition: The Constitutional Entrenchment	
of E		nic and Social Rights in South Africa	
	Evel	упе Ѕснмід	59
1.		oduction	
2.	Sout	h African Constitutional Law During and After Apartheid	
	2.1.	The 'Thin' Rule of Law During Apartheid	
	2.2.	International Law in the New Constitution	63
	2.3.	The Bill of Rights and Reasons for a 'Thick' Conception of	
		Rule of Law	
		2.3.1. Justiciable Economic and Social Rights	
2	г 1	2.3.2. Inspiration from International Law	
3.		uating the Empowerment of Courts to Address ESR	
	3.1.	If and How International Norms Have Been Used	58
	3.2.	Similarities and Differences Between the South African ESR	
		Jurisprudence and International Normative Developments	
		3.2.1. Non-Application of Relevant ESR Provisions	
		3.2.2. Rejection of the Minimum Core Concept	/1
		3.2.3. South African Jurisprudence Influences the Optional Protocol to the ICESCR	72
	3 3		13
	3.3.	Whether Entrenching International ESR Norms Has Led to	74
4.	Ident	Concrete Improvements	
1.		Process and Actors	
		Legal Tradition and a Shared Belief in the Relevance of Law 7	
5.		clusion	
			O
Judio	ial Ac	tivism and the Use of International Law as Gap-Filler in	
		Law: The Case of Forced Disappearances Committed During	
the A	rmed	Conflict in Nepal	
	Rishi	kesh Wagle 8	33
1.	Intro	duction	33
2.		of International Law in the Nepalese Legal System	
	2.1.	Difficulty in Recognizing a Treaty as a Part of the Domestic Law 8	
	2.2.	Influence of International Human Rights Law in the Nepalese	are i
			20

3.	The	Dhakal Case
	3.1.	Background92
	3.2.	Judicial Activism to Fulfil the Obligations under International
		Human Rights Law
	3.3.	Obligation of the State under Domestic and International Law
		in Post-Conflict Situations and the Role of Courts
		3.3.1. Recognition of 'Right to Truth' as a Fundamental Right 96
		3.3.2. Obligation of the State to Provide Relief to the Victims 97
		3.3.3. Obligation to Initiate Legal Proceedings Against
		Perpetrators
	3.4.	Order for Introducing Separate Legislation to Deal with
		Enforced Disappearances
	3.5.	Application of the Disappearance Convention for Dealing
		with the Past in Nepal
	3.6.	Factors that Empowered the Court to Come to the Decision 103
4.	Cor	nclusion
-		
Inte	ernatio	onal Law and Iraqi Courts
	Hai	der Ala Hamoudi
1.	Inti	roduction – Promising Conditions and Unfulfilled Promise
2.	Tra	ditional Approaches
3.	The	CPA and International Law
4.	The	e Final Constitution and the Rejection of International Law in
	Do	mestic Proceedings
5.	Co	nclusion
		I to mational Standards in
		tionalism without Governance: International Standards in
the	Afgh	an Legal System
	Eb	rahim Afsah
1	T 4	roduction: The Role of Law in Stabilising Conflict
1.	Do	litical Context of Reconstruction
2.	Inc	stitutional Context of Reconstruction
3.	En	nctional Assumptions and Cultural Norms
4. 5.	ru t.i.	eal and Reality of Statehood
	Cto	atehood as a Prerequisite of Constitutionalism
6.	Sta	onstitutionalism without a State?
7.		146
	7.1	148
0	7.2	onclusion
8.		DICTUSION

Uı	nderstandings of International Law in Rwanda: A Contextual Approach		
	Nicola Palmer		
1.	Introduction		
2.	The Role of Law during Transitions: A Contextual Perspective		
3.	International Law in Post-Genocide Rwanda		
	3.1. International Criminal Law and the Security of the Rwandan		
	State		
	3.2. International Human Rights Law in Rwanda		
	3.3. Mitigating the Tensions in International Law and Dealing		
	with an Impossible Caseload		
4.	International Law and the Legal Culture of the National Courts 170		
5.	Conclusion		
Vir	tuous Flexibility. The Application of International Human Rights		
No	rms by the Bosnian Human Rights Chamber		
	Antoine Buyse		
1.	Introduction		
2.	The Genesis of a new Institution		
3.	The Scope of Human Rights – Flexibility in Practice		
4.	Interpreting Substantive Obligations		
5.	Conclusions		
Wai	r Crimes Chamber of the Court of Bosnia and Herzegovina: Seeding		
"Int	ernational Standards of Justice"?		
	Katerina Uhlířová		
1.	Introduction		
2.	Rule of Law versus 'Rule of Ethnicity'		
	2.1. First Constitutional Moment: Dayton Peace Agreement and		
	the Nature of the New Constitution		
	2.2. Role of International Law in the New Constitution		
	2.3. New Constitution found to be in Breach of the European		
	Convention on Human Rights: How Ethnicity in BiH Still		
	Matters 202		
	2.4. Effects of the Constitutional Framework on Harmonization of		
	Criminal Legislation in BiH: Implications for Prosecution of		
	International Crimes		
3.	The Establishment of the War Crimes Chamber of the Court of		
	Bosnia and Herzegovina as a Contribution to the Rule of Law		
	Efforts in BiH		
	3.1. Establishment of the WCC		
	706		

	3.2.	Contribution of International Personnel at the WCC to
	-	Rule of Law Efforts in BiH
	3.3.	Legal Basis of the WCC and the Applicable Law
	3.4.	Application of Joint Criminal Enterprise by International
	0.2.	(ICTY) and National Court (WCC): Will JCE Survive the
		Transplantation into Domestic Law?
		3.4.1. Rasević and Todović Case (JCE Applied)
		3.4.2. Vuković Case (JCE Not Applied)
4.	Con	clusion: the Rule of Law Still in the Making
		Carry Commission Contonal and District Courts:
		on of War Crimes in Bosnian Cantonal and District Courts:
the I	Role o	f the Rule of Law
	Sanj	a Popovic
	т.,	oduction
1.	Intro	kground: From the Trenches to The Hague and Then Back
2.	Bacı	in 223
	Aga	Entity Judiciaries
	2.1.	Prosecute a War Crime: Determining the Appropriate Legal
3.	101	ndard
		779
	3.1.	231
	3.2.	cific Problems in the Cantonal and District Courts in Applying
4.	Spe	ernational Criminal Law
	Inte	ernational Criminal Law
	4.1.	Can International Law Make Concession for Inadequate
		Evidence at Local Level?
	4.2.	Witness Issues
	4.3.	Sentencing
5.	Les	sons from Bosnia
Wa	r Crir	mes Prosecution in a Post-Conflict Era and a Pluralism of
Jur	isdict	ions: the Experience of the Belgrade War Crimes Chamber
	Sha	aron Weill and Ivan Jovanović
1.	Int	roduction
2.	The	e Establishment of the Belgrade War Crimes Chamber
	2.1	Between Internal Democratic Changes and External
	2.1	Pressure: a Background
	2.2	Serbian War Crimes Chamber and War Crimes Prosecution
	2.2	Office
		2.2.1. Structure
		2.2.2. Jurisdiction
		2.2.3. Relationship with the ICTY

	2.3. Legal Framework for the War Crimes Trials
	2.3.1. Relationship between International and Municipal Law 249
	2.3.2. Substantive Criminal Law
	2.4. Strengthening the capacity of the War Crimes Chamber 252
3.	The First Years of the Belgrade War Crimes Chamber: an Assessment . 253
	3.1. Case studies
	3.1.1. The Anton Lekaj Case
	3.1.2. <i>'The Scorpions'</i> Case
	3.1.3. The <i>Ovčara</i> Case
	3.2. Patterns and Trends
	3.2.1 Legal Framework for Application of International Law 264
	3.2.2. The Ability of the WCC to Enforce International Law 264
	3.2.3. The Willingness of the WCC to Apply International Law . 265
4.	Conclusion
	20/
The	e Treatment of Occupation Legislation by Courts in Liberated
Ter	ritories
	Eyal Benvenisti and Michal Saliternik
1	
1.	Introduction
2.	Occupations during World War II
	2.1. Bulgarian Occupation of Greece: The Komotini Case
	2.2. German Occupation of Luxembourg: The Case of $G v H \dots 274$
2	2.3. Allied Occupation of Italy: The Du Ban Case
3.	South African Rule in Namibia: The Cultura 2000 Case
4.	Coalition Occupation of Iraq: The Trial of Saddam Hussein
5.	UN Administrations
	5.1. UN Transitional Administration in East Timor: The <i>Dos</i>
	Santos Case
	5.2. UN Interim Administration Mission in Kosovo: The
_	Thermosystem Case
6. -	Lessons Learned
7.	Conclusion
П	II. 141 C7
ine	Use and Abuse of International Law: Choice of Applicable Criminal
Law	in Post-Conflict East Timor
	Yaël Ronen
ι.	Introduction
2.	Introduction
3.	Background
	of the Law of Fact Timor
	of the Law of Last Tilliof

4.	The Role of International Law: Pre-October 1999 Law and the	
	dos Santos Affair	298
5.	Legal Factors in the Determination of East Timor's	
	Domestic Law	302
6.	The Politics of Determining Domestic Law – a Comparative	
	Assessment	306
7.	Conclusion	309
Co	ncluding Observations	
	Edda Kristjánsdóttir, André Nollkaemper	211
	and Cedric Ryngaert	. 311
1.	Constitutional Moments	. 312
-	1.1 Types of Transition	. 312
	1.2. Moments in Time	. 314
2.	Form and Substance of Empowerment	. 315
3.	Actors	. 319
4.	Limitations	. 321
5	Effects	. 326