CHAPTER EIGHT

MIXED MODELS OF INTERNATIONAL CRIMINAL JUSTICE

SECTION 1. INTRODUCTION

The Security Council’s establishment of the Commission of Experts to Investigate Violations of International Humanitarian Law in the former Yugoslavia in October 1992\(^1\) broke the silence of the international community on major issues of international criminal justice (ICJ) that began after the completion of the post-World War II prosecutions. In the short period of time between 1993 and 1994, the Security Council established both the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR). ICJ was now not only recognized, but officially sanctioned by the Security Council. Some officials in governments and international civil society saw these developments as a sign that the international community was finally moving toward a permanent system of ICJ, whose pillar would be the International Criminal Court (ICC).\(^2\) Others, however, were hoping to continue the practice of ad hoc institutions, either as a way of supplementing the work of the ICC, or as a way for the Security Council to maintain control of ICJ.\(^3\)

The United Nations, in particular the Security Council, has been confronted with several choices in addressing post-conflict justice (PCJ) issues, especially with respect to a number of conflicts that caused a high level of victimization.\(^4\) This includes considerations on which PCJ modalities to use and how.\(^5\) For a

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\(^3\) Which is another manifestation of complementarity. Id.


variety of reasons, the Security Council has been selective in addressing only a certain number of PCJ situations. Chief among the Security Council’s concerns is that it did not want to become the UN body entrusted with PCJ. This concern derived from the fact that the Security Council sees itself as a collective security body and that function does not seem, at least so far, to include PCJ. The other two reasons arose from the Security Council’s experience with the two tribunals it did establish, namely the ICTY and ICTR. The first of these is the unexpected high costs of these tribunals, and the second is the amount of time the Council has to devote to their administration. All of these reasons led the Council to consider other options, such as the mixed-model tribunals discussed herein.

The Security Council’s selectivity of which PCJ situations to address has also been marked by its inconsistent approach to these situations. Admittedly, each conflict is sui generis, but the ad hoc approach taken by the Council has reflected political expediency and a lack of planning that is completely heterogeneous. For example, while the Security Council addressed PCJ issues in Sierra Leone, it only dealt with the restoration of peace with respect to Liberia. In Cambodia, the Security Council addressed the issue of restoration of peace and established a tribunal to attempt to address some accountability issues arising out of that conflict. In the conflict in Kosovo, however, the Security Council addressed both peacekeeping and PCJ issues, as it did in Timor-Leste. By addressing a

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