CHAPTER 1

International Criminal Tribunals

Distinctions and Main Features

1 Values and Goals of ICTs

The functioning of International Criminal Tribunals (ICTs) is premised on the assumption that, at least to some extent, “...the proliferation of international judicial institutions has a socializing effect on states that leads to the ever greater acceptance by them of the jurisdiction and role of international tribunals...”¹ As of 1993, the international community created ICTs on the assumption that: (i) States would be willing to lend its support to ICTs, and (ii) ICTs could have a deterrent and protective effect. In the same vein, apart from the International Criminal Tribunal for the former Yugoslavia (ICTY, 1993), the International Criminal Tribunal for Rwanda (ICTR, 1994), the Special Court for Sierra Leone (SCSL, 2002) and the International Criminal Court (ICC, 2002),² other (regional) ICTs were established, such as, the Special Tribunal for Lebanon (STL, 2009), the Bangladesh War Crimes Tribunal (2009)³ and the Extraordinary Chambers in the Courts of Cambodia (ECCC, 2003).⁴ Among other arguments, two observations should be made:

(i) The creation of ICTs promote, without a doubt, the cross-fertilization of international criminal law jurisprudence, enriching international criminal law (both procedurally and substantive) as a growing discipline.⁵

(ii) At the same time, however, one should bear in mind that the proliferation of ICTs could, in its effect, also result in some adverse consequences for a spontaneous development of international criminal law.

² Throughout this book the wording “International Criminal Tribunals (ICTs),” is used to refer to both the international criminal tribunals and courts.
³ Also referred to as the International Crimes Tribunal of Bangladesh.
⁵ Buergenthal, “Proliferation of International Courts and Tribunals,” 269.
The existing principles and practices in international criminal law could give rise to differences in jurisprudence which could jeopardize the unity of international criminal law if its case law yields conflicting or mutually exclusive legal doctrines.6

While establishing ICTs, the international legal community endeavors to create a world legal order. This implies, inter alia, that the various benches of these tribunals should be regarded of equal jurisprudential value.7 In particular, regional and ad hoc ICTs in specific regions of post-conflict, such as the UN Special Court for Sierra Leone, have resulted in several convictions of the “most responsible” individuals, such as Charles Taylor. Moreover, such regional courts can be instrumental to both the proliferation of national legislation and jurisprudence, whilst at the same time endorsing the social and moral fabric of the people in question. Most importantly, their functioning can contribute to the restoration of peace and security. However, critics question whether ICTs can realize these goals.8 These critics also refer to divergent legal views, stemming from the conflicts and overlap between regional ICTs and the ICC’s jurisdictional parameters. A potential solution could be to reverse hierarchical relationships in that primacy is given to the jurisdiction of the particular regional ICT rather than to the ICC. In fact, the ICC’s jurisdiction is complementary to national jurisdictions and prosecution. This complementarity rule may also apply to regional ICTs.

2 The ICTY and ICTR

2.1 Unique Origins

Both the ICTY and the ICTR have been engaged in prosecuting war criminals. At present, the ICTY is finalizing its last four cases, while at the ICTR only a few cases are pending in appeal.9

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6 Id., 272.
7 Id., 274.
9 At the time of writing, four cases (Goran Hadžić, Radovan Karadžić, Ratko Mladić and Vojislav Šešelj) were in the trial phase at the ICTY and sixteen cases were pending on appeals,