Chapter 9
Different Models of Tribunals
Madelaine Chiam

The International Military Tribunal (IMT) at Nuremberg represented the first time that senior political and military leaders were tried and sentenced by an international tribunal for their part in the commission of crimes against peace, war crimes and crimes against humanity. The legacies of the IMT, both positive and negative, were influential in the creation of the International Criminal Tribunals for the former Yugoslavia (ICTY) and Rwanda (ICTR). The lessons of these later Tribunals have in turn affected the way in which subsequent post-conflict tribunals have been composed and function. The Special Court for Sierra Leone, the East Timor Special Panels, the Cambodian Extraordinary Chambers and the Kosovo Courts, as well as the International Criminal Court (ICC), have been constructed to address at least some of the limitations identified with the earlier Tribunals. The social and political consequences of the IMT, ICTY and ICTR have also had an impact on views about the role of truth commissions and other mechanisms, such as reparations, in transitional justice. Indeed, the international community has learned much from the many different transitional justice mechanisms that have developed since the IMT.

One lesson, perhaps the most important, is that there is no ‘model’ approach to transitional justice. As the former United Nations Secretary-General has stated, ‘[w]e must learn as well to eschew one-size-fits-all formulas and the importation of foreign models, and, instead, base our support [for transitional justice] on national assessments, national participation and national needs and aspirations’. This attitude might have its origins in the IMT, but it is also a considerable way from the aims of that Tribunal, in as far as it sought to ensure international criminal accountability for mass murderers and torturers.

This chapter undertakes a modest exploration of three models of judicial tribunals that have been established in the aftermath of mass atrocity: international, ‘mixed’, and national tribunals. The chapter aims to examine how the international community’s attitudes towards transitional justice have shifted to take into

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account the experiences of each model. Observers of these tribunals have adopted
different approaches to assessing their successes and failures, and many of the
critiques relate to either:
1. The extent to which the tribunals have, and are seen to have, provided justice:
   justice being understood as holding individuals accountable in a manner that
   adheres to international standards of fair process; and
2. The degree to which the tribunals have contributed to a process of reconcili-
   ation within the local society.

Judicial mechanisms have often been used in conjunction with other means
of achieving accountability and reconciliation, such as investigatory commis-
sions, truth commissions, lustration mechanisms, civil remedies and reparations. Different chapters in this volume address in detail the substantive issues relating to the extent to which tribunals and other accountability mechanisms play a role in long-term reconciliation within domestic societies. My intention here is not to revisit those arguments. Rather, my aim is to use the two broad themes of justice and reconciliation as a guide to the way post-conflict tribunals have been perceived and, thus, to the way that tribunal processes have been subsequently designed.

In the remainder of this chapter, I outline the establishment of a number of tribunals, their institutional design, and the extent to which those tribunals have succeeded in meeting the expectations of their different constituencies. In exploring the motivations for and the workings of different international, ‘mixed’ and national tribunals, I argue that, despite the many criticisms that have been levelled at the judicial arm of transitional justice mechanisms, these processes are, and will remain, significant in securing justice after conflict.

I International Tribunals: The ICTY and the ICTR

The ICTY and ICTR, as the first international war crimes tribunals to be established since World War Two, are the most obviously direct descendants of the Nuremberg IMT. The character and work of these Tribunals are well-known, and

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