HEINONLINE

Citation: 10 Or. Rev. Int'l L. 361 2008

Content downloaded/printed from
HeinOnline (http://heinonline.org)
Wed Jun 16 14:24:37 2010

-- Your use of this HeinOnline PDF indicates your acceptance of HeinOnline's Terms and Conditions of the license agreement available at http://heinonline.org/HOL/License

-- The search text of this PDF is generated from uncorrected OCR text.

-- To obtain permission to use this article beyond the scope of your HeinOnline license, please use:

https://www.copyright.com/ccc/basicSearch.do?&operation=go&searchType=0&lastSearch=simple&all=on&titleOrStdNo=1543-9860

ELENA BAYLIS*

Tribunal-Hopping with the Post-Conflict Justice Junkies

I. Who Are the Post-Conflict Justice Junkies? 363
II. Why Ask What Individual Post-Conflict Justice Junkies Know? 366
III. Post-Conflict Justice Junkies in Their Natural Habitats: Institutions and Networks 370
IV. What Do Post-Conflict Justice Junkies Do?: Tribunal-Hopping and Work Habits 371
V. "Known Knowns": Six Types of Knowledge and Their Positive Consequences 377
VI. "Known Unknowns": What Post-Conflict Justice Junkies Don't Know 382
VII. Conclusions 388

Freetown, Sierra Leone, is only a few hours by plane from the bustling metropolis of Dakar, Senegal, but it is a totally different world. It is July 2005, three and a half years after the end of Sierra Leone's brutal "blood diamond" conflict. Many of the buildings in downtown Freetown still sit askew as if struck by an earthquake. Across the city, homes have been rebuilt as shanties of tin and U.N. tarp. It is the rainy season, and the air is heavy with humidity. The roads are scarred with ruts so deep that even a four-wheel drive vehicle shudders and sways as it strains to

* Associate Professor, University of Pittsburgh School of Law; J.D., Yale Law School; B.A., University of Oregon. This Article has benefited from presentation at the Law and Society Annual Meeting in Montreal and at this symposium. Thanks to Paul Schiff Berman, Mark Drumbl, Sally Merry, and Jane Stromseth for their comments, advice and encouragement, to Lisl Brunner for her research, and to Hari Osofsky for organizing this symposium together with the *Oregon Review of International Law* staff.

HeinOnline -- 10 Or. Rev. Int'l L. 361 2008

overcome them. At night, there is a darkness so complete on the unlit streets that to venture out without a flashlight is to risk a broken leg or worse. Supplies of water and electricity are unreliable. Malaria and typhoid are rampant. Poverty is endemic and virtually absolute. The city is swollen with refugees.[1]

The Special Court for Sierra Leone can be found on Jomo Kenyatta Road near the city center behind barbed wire and protected by heavily armed U.N. peacekeeping forces. The courthouse is brand new and was constructed especially for the Special Court, as indeed was everything else within the compound's walls. The court operates as an entity unto itself, with the courthouse, judges' chambers, staff offices, a cafeteria, and even the defendants' prison all contained inside the compound. To enter, one must present ID, pass through a metal detector, put one's belongings through an x-ray machine, and be escorted to one's destination by an employee or guard. The public is admitted only on days when the court is holding an open session. In the court, judges, attorneys, administrators, and other court staff are handling three trials of crimes against humanity and war crimes against nine Sierra Leonean defendants designated as those "who bear the greatest responsibility" for the infamous atrocities that occurred there.[2] Many of these personnel are foreigners: Americans, Brits, Indians, and others.

Dinner parties are, if not a daily event, frequent enough. On the balcony of an apartment within a few kilometers of the courthouse, the hosts are grilling hamburgers while their guests drink gin and tonics or South African wine. The alcohol and food has been brought back from trips abroad or purchased at stores stocked with low-end foreign goods at some substantial multiple of their ordinary price. There is a lot of shop talk, as

---

1 This and the following descriptions of Freetown and the Special Court for Sierra Leone are based on my personal observations during a visit in July 2005. For a description of the quality of life in Freetown, see also UNITED NATIONS DEVELOPMENT PROGRAMME HUMAN DEVELOPMENT REPORTS, 2007/2008 COUNTRY FACTSHEETS, SIERRA LEONE, *available at* http://hdrstats.undp.org/countries/country_fact_sheets/cty_fs_SLE.html.

2 Statute of the Special Court for Sierra Leone, art. 1(1), *available at* http://www.sc-sl.org/Documents/scsl-statute.html. A tenth case against Charles Taylor, the former president of Liberia, has since been convened, albeit in The Hague. *See* The Prosecutor v. Charles Ghankay Taylor, No. SCSL-03-01-PT (May 29, 2007), *available at* http://www.sc-sl.org/taylor.html.

HeinOnline -- 10 Or. Rev. Int'l L. 362 2008

there will be at such events. Some guests express impatience with the pace of the trials or with the unsympathetic manner of the judges toward victims called as witnesses. Some are concerned about legacy and outreach, two of the aims with which the court's registry is tasked and areas in which the Sierra Leonean court hopes to outdo its predecessors in The Hague and Arusha.[3] There is also talk of the common pastimes of the group: traveling (to Dakar or South Africa, but not within Sierra Leone, which is largely inaccessible because of the rain and not suitable for tourism even in the dry season); collecting traditional masks (a favorite souvenir); and ascertaining the best places to obtain good food and drink (in certain stores, at a few favored restaurants, and from recent arrivals stocked with personal supplies). And there is gossip. Some of these people knew each other before, in Kosovo, in The Hague, in East Timor, or in Cambodia, all hot spots for post-conflict justice work. Even if not previously acquainted with one another, they know each other's friends, acquaintances, and lovers from these places. The interconnections, new and old, are rife. Instead of six degrees of separation, in this crowd there are at most two, and usually less than that. The guests are all relatively junior personnel, including interns, attorneys, and other court officers and staff. There are only a handful of people over the age of forty. There are no Sierra Leoneans present.

I
WHO ARE THE POST-CONFLICT JUSTICE JUNKIES?

Who are these "post-conflict justice junkies," and what role do they play in shaping post-conflict justice and legal development in Sierra Leone and elsewhere? First, some definition of terms is in order: "internationals" is the word commonly used in the field to refer to any foreigners working for international organizations.[4] Here, I coin the term "post-conflict

3 To be sure, the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) are not predecessors in the strictest sense since they are purely international courts and the Special Court is a hybrid court. However, they are its predecessors in the international effort to establish ad hoc tribunals to redress mass atrocities in particular states.

4 *See* Kimberley A. Coles, *Ambivalent Builders: Europeanization, the Production of Difference, and Internationals in Bosnia-Herzegovina*, 25 POLAR POL. & LEGAL ANTHROPOLOGY REV. 1, 2 (2002) (using the term also).

HeinOnline -- 10 Or. Rev. Int'l L. 363 2008

justice junkies" to refer more specifically to internationals who work on post-conflict justice issues and who maintain an itinerant lifestyle in pursuit of that work, moving from one post-conflict justice hot spot to the next as the previous spot cools down. It is, at its best, an exciting and challenging field involving matters of life and death—or at a minimum, great suffering and long incarceration—for the victims and defendants. For international-minded attorneys and others looking for a chance to make a difference or to do interesting work, this area offers the opportunity to be involved in the aftermath of some of the cataclysmic events of our time and to contribute something to the young juggernaut of international criminal law. Perhaps post-conflict justice doesn't offer the same high as heroin or cocaine, but for the junkies who are hooked on it, it is addictive nonetheless, particularly when the alternative is the grind of corporate litigation. Thrill-seeking and a somewhat compulsive approach to the job are thus essential parts of the post-conflict justice junkie lifestyle. They are also two of the reasons that I prefer this moniker to the more understated title of "international" for this particular subset of the international community.

Post-conflict justice junkies also tend to be relatively young. This is at least in part because post-conflict conditions tend to be rough, in part because the financial compensation is far from lavish, and in part because post-conflict zones are not particularly welcoming to families. The post-conflict justice junkies I met at the Special Court were skewed especially young because the conditions in Freetown were particularly difficult, because the tribunal had less funding and offered lower compensation than some of the others, and because foreign employees were not permitted to bring their families to this posting even if they wished to do so.

Within the legal literature on post-conflict justice and legal reform, there has been a great deal of analysis of processes, norms, and institutions, but little examination of the people involved and the roles they play, particularly at the relatively junior level.[5] To be sure, case studies of particular post-conflict

---

5 *See, e.g.*, Rosa Ehrenreich Brooks, *The New Imperialism: Violence, Norms and the "Rule of Law,"* 101 MICH. L. REV. 2275 (2003); Diane F. Orentlicher, *Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime*, 100 YALE L.J. 2537 (1991); Ruti G. Teitel, *Transitional Justice Genealogy*, 16 HARV.

HeinOnline -- 10 Or. Rev. Int'l L. 364 2008

settings are peppered with some version of a common critique: that the involved international actors lack a deep understanding of the local situation and have accordingly fallen prey to critical errors in judgment based on cultural, legal, historical, or other misunderstandings.[6] In my experience, this critique is often accurate, although there are exceptions to be found in any setting. However, these studies typically jump immediately from this observation to prescriptions for better understanding without addressing the fundamental question of what internationals do and do not know generally—and, as important, what they can and cannot know in light of the nature of their involvement in these post-conflict states.[7] Nor do these critiques consider the conclusions that I draw here: (1) that the conditions that produce this lack of local knowledge are structural, not situational and (2) that these conditions may also produce other forms of knowledge that actually contribute to the goals of post-conflict justice.

This Article is, thus, an effort to think systematically about an issue that has heretofore been addressed in a relatively glancing and situation-specific manner and that has not been identified as an important subject of inquiry in itself. In so doing, I draw heavily upon my own observations in Ethiopia, Kosovo, Sierra Leone, and the Democratic Republic of Congo (DRC) and build upon my previous articles on related subjects.[8] I focus here on

---

HUM. RTS. J. 69 (2003). Such issues have, however, long been addressed in anthropological literature. Indeed, at the moment there seems to be an upsurge of interest in international law and human rights as a subject of anthropological inquiry. *See, e.g.*, Iris Jean-Klein & Annelise Riles, *Introducing Discipline: Anthropology and Human Rights Administrations*, 28 POLAR POL. & LEGAL ANTHROPOLOGY REV. 173 (2005); *see also* THE PRACTICE OF HUMAN RIGHTS: TRACKING LAW BETWEEN THE GLOBAL AND THE LOCAL (Mark Goodale & Sally Engle Merry eds., 2007); Annelise Riles, *Anthropology, Human Rights, and Legal Knowledge: in the Iron Cage*, 108 AM. ANTHROPOLOGIST 52 (2006) [hereinafter Riles, *Anthropology*].

6 *E.g.*, Brooks, *supra* note 5, at 2291–93.

7 David Tolbert & Andrew Solomon, *United Nations Reform and Supporting the Rule of Law in Post-Conflict Societies*, 19 HARV. HUM. RTS. J. 29, 59 (2006).

8 My descriptions and conclusions throughout this Article are based on my observations over the past six years in post-conflict and what might be called post-post-conflict states (i.e., states that have moved beyond the immediate post-conflict era and are engaged in a long-term process of post-conflict legal redevelopment), including Ethiopia, Kosovo, Sierra Leone, and the DRC. I make particular use here of my recent research in the DRC and build upon the findings that I present in a forthcoming article, Elena A. Baylis, *Reassessing the Role of International Criminal Law: Rebuilding National Courts Through Transnational Networks*, 50

two questions carved from the broader issue of the identity and role of internationals in transitional justice and post-conflict legal development: (1) What can and do post-conflict justice junkies know? and (2) How does their knowledge or lack thereof affect their work on post-conflict justice issues?

II
WHY ASK WHAT INDIVIDUAL POST-CONFLICT JUSTICE JUNKIES KNOW?

Why focus on these particular questions concerning individuals and their knowledge? For one thing, I aim to expand the universe of what we take into account as relevant knowledge when we assess post-conflict justice processes. Like people, knowledge is a relatively neglected aspect of post-conflict justice. Proponents of theories of international law-making such as transnational legal process and global legal pluralism have long advocated that the relevant scope of inquiry for understanding international law-making processes should be relatively expansive. International law is constructed, they argue, not just by formal proceedings such as trials or legislative sessions nor authoritative bodies like courts, but also by a wide range of informal and ad hoc interactions between actors as disparate as non-governmental organizations (NGOs) and trial attorneys.[9] However, this expansiveness in the definition of law-making process has not prompted a similar discussion of a need for expansion in the definition of law-making knowledge. To the extent that these theories conceive of knowledge in any particular way at all, it seems to have remained a relatively narrow category that is essentially synonymous with law itself, or perhaps with expertise in law and legal theories. Likewise, it seems to inhere primarily in a limited set of authoritative legal

B.C. L. REV. 1, § II.C.4: *Networks of International Organizations, Networks, and Others* [hereinafter Baylis, *Reassessing*]. To ensure accuracy, I have checked my descriptions of particular events with others who were present whenever possible. To protect the privacy of the described individuals, I do not use their names, and I have made an effort to avoid providing personal details that would permit them to be readily identified.

9 *See* Harold Hongju Koh, *Transnational Legal Process*, 75 NEB. L. REV. 181, 184 (1996); Paul Schiff Berman, *Global Legal Pluralism*, 80 S. CAL. L. REV. 1155, 1159–63 (2007).

HeinOnline -- 10 Or. Rev. Int'l L. 366 2008

documents and texts.[10] I suggest that our understanding of international law-making processes in the post-conflict justice setting would benefit from affirmatively recognizing a broader set of law-making knowledge that encompasses, but is not limited to, law or legal knowledge as such. This broader set of law-making knowledge includes other types of knowledge that are crucial to achieving the aims of post-conflict justice, including, for example, technical knowledge of relevant skills and analogical knowledge gleaned from one post-conflict setting and applied to another.

Annelise Riles characterizes and criticizes the predominant understanding of legal knowledge as "technocratic instrumentalism." She points to the modern international law regime as a particularly salient example of this approach: "U.S. trained lawyers have promoted a vision of international law as a set of problem-solving institutions and of legal techniques deployed and managed by international bureaucrats."[11] I invoke Riles' critique here not to propose that we should abandon instrumentalism, but rather to suggest that this instrumentalism provides a justification for my claim that we should recognize a broader set of law-making knowledge. Post-conflict justice is openly and unashamedly intended to achieve certain extralegal goals: to end impunity, achieve reconciliation, deter future perpetrators, produce accountability for victims, and so on. One could contest (and indeed, I have contested in the past)[12] whether it can in fact achieve those goals, but not whether it is aimed at them. The instrumentalist nature of post-conflict justice suggests that we should take a purposive, rather than a formalist, approach to the construction of law-making knowledge. Specifically, we should incorporate all forms of knowledge that help achieve those extralegal aims, just as we have incorporated into our conception of international law-making processes all processes that contribute to the development of international law.

Furthermore, although scholarly analysis of the development of international criminal law typically focuses on the role of

---

10 *But see* Annelise Riles, *Models and Documents: Artifacts of International Legal Knowledge*, 48 INT'L & COMP. L.Q. 805 (1999).

11 *See* Riles, *Anthropology*, *supra* note 5, at 59.

12 Baylis, *Reassessing*, *supra* note 8, at *Introduction* & § II.A: *Post-Conflict Congo*.

groups in constructing that law,[13] in my view the individual may well be the most relevant order of magnitude at which to understand many post-conflict justice processes. At a minimum, individual people are an important unit of analysis in this field. When we invoke the images of "post-conflict justice," an "international intervention," or a "U.N. administration," there is a tendency to envision the United Nations moving in as a monolithic bureaucracy endowed with vast knowledge and resources, or at least with massive size and shape. This tendency is reflected and reinforced in the literature (my own writing included) that refers to the actions of "UNMIK" in Kosovo or "MONUC" in the DRC, as if the institutions themselves were singular entities that could act independent of human volition.[14]

Such references are both convenient (in that they avoid the necessity of determining which individual within an institution undertook an action) and legally accurate (in that institutions have the authority to undertake binding legal actions and those actions are understood to be legally tied not to any individual actor but to the institution). However, they nonetheless distract us from the reality that it is individual people with individual experiences and knowledge who arrive, one at a time, into a fully formed legal-political setting and who react to the needs and crises of the moment beginning immediately upon their arrival. These individual people and their individual actions constitute what the United Nations, and any other involved institutions, are perceived to do in these settings. It is always true to some degree, of course, that the individual level matters. All the more so in chaotic post-conflict settings where domestic bureaucracies are decimated, and virtually everything is up for grabs. In these contexts, individual initiative and actions are frequently decisive.

For example, it happened that the arrival in the DRC of a U.N. officer with immediate expertise in investigation of massive human rights violations from a previous posting coincided with a

---

13 Such groups include governments, non-governmental organizations, supra-governmental entities, and increasingly, networks. *E.g.*, Jenia Iontcheva Turner, *Transnational Networks and International Criminal Justice*, 105 MICH. L. REV. 985 (2007).

14 Of course, the United Nations is an example of one of the international actors involved in such interventions, but not the only involved actor. UNMIK is the acronym for the U.N. Mission In Kosovo, and MONUC is the acronym for the U.N. Mission in Congo. *E.g.*, Baylis, *Reassessing*, *supra* note 8; Elena A. Baylis, *Parallel Courts in Post-Conflict Kosovo*, 32 YALE J. INT'L L. 1 (2007).

HeinOnline -- 10 Or. Rev. Int'l L. 368 2008

devastating attack on civilians in and around the town of Mambasa. Attacks on civilians had been occurring throughout the Congolese conflict, so this problem was not a new one. But this attack had been particularly horrific—a non-governmental militia had gone systematically from house to house, raping, stealing, and at times even cannibalizing at each one in turn—and so the assault sparked a sense of urgent need for some accountability. This confluence of need and expertise enabled the freshly arrived officer to create a new Special Investigations Unit (SIU) devoted to investigating such atrocities. The Mambasa attack, know as *Effacer le Tableau*, became the nascent unit's first investigation. The reports generated by that investigation raised an international outcry and prompted the Security Council to send additional peacekeepers to the region. Today, SIU investigators continue to gather information on massive atrocities in eastern DRC and to provide that information to national courts and the International Criminal Court for use as evidence in war crimes trials.[15]

This could be described, and indeed is typically described, as an institutional development: MONUC established a new investigations unit.[16] But it is also accurate, and perhaps more enlightening, to describe it as a development brought about by the personal initiative and experience of an individual: a MONUC officer brought specialized knowledge acquired in another post-conflict setting to the DRC and applied it to an urgent local need, enabling the development of an institutional structure for addressing that need where none existed before. It is people who develop post-conflict justice processes and institutions. Who they are and what they know is thus important, both in shaping the nature of those processes and institutions and in determining their success.

---

15 *See* Baylis, *Reassessing*, *supra* note 8, § II.C.4.

16 Or, in even more oblique and passive phrasing: "Beginning in December 2002, the [Human Rights] Section [of MONUC] has been mandated to coordinate and conduct multi-disciplinary special investigation missions on cases of gross violations of human rights." Office of the High Commissioner for Human Rights, HR Component of the UN Peace Mission in Democratic Republic of Congo, http://www.unhchr.ch/html/menu2/5/rdc.htm.

HeinOnline -- 10 Or. Rev. Int'l L. 369 2008

III
POST-CONFLICT JUSTICE JUNKIES IN THEIR NATURAL HABITATS: INSTITUTIONS AND NETWORKS

Although I posit the individual as a fundamental unit of analysis, the first and most important thing to know about post-conflict justice junkies is that they are not operating on their own.[17] This is true on at least two levels. For one thing, there are very few cowboys out there going it alone; instead, most individuals associate themselves with institutions, even if only as consultants. The reasons are simple: money and power. As for money, in destroyed post-conflict economies, there is typically little gainful employment available through the local economy, so internationals must be employed by institutions to earn a living.[18] The money for post-conflict reconstruction typically flows from foreign donors through on-the-ground foreign and international institutions to local partners.[19] Post-conflict justice junkies operate mostly at the middle level, on-the-ground foreign and international institutions, because that is their point of entrée for gainful employment within the post-conflict setting. As for power, for those interested in influencing and rebuilding legal systems, a place within an institution with a transitional

---

17 In spite of my commitment to the individual as the most relevant (or at least a relevant) unit of analysis in post-conflict justice settings, I must concede that it is impossible as a researcher concerned with the larger phenomenon of post-conflict justice to consider the subject individual by individual. However, in light of this commitment, I return to the individual level whenever possible in my analysis. Furthermore, I pursue analysis of the group in some part as a proxy for analysis of individuals rather than as the primary unit of analysis in itself. In this sense, the group is relevant both as a collection of individuals and also because participation in the group and its culture to some extent constitutes the individual and his/her actions.

18 *E.g.*, Toby Poston, *The Battle to Rebuild Afghanistan*, BBC NEWS, Feb. 26, 2006, http://news.bbc.co.uk/2/hi/business/4714116.stm.

19 For example, funds tend to originate with foreign states, supranational entities like the United Nations or the European Union, or international NGOs. There are a variety of international institutions on the ground, which are often branches of the donors, such as the aid branches of foreign embassies, the U.N. missions like UNMIK and MONUC, and local offices of international NGOs. The final national and local recipients include governments, local NGOs, and local businesses and individuals. Tolbert & Solomon, *supra* note 7, at 55–56; Homi Kharas, Trends and Issues in Development Aid 15–16 (Wolfensohn Ctr. for Dev. at The Brookings Inst., Working Paper No. 1, 2007) (tracking aid flows for development aid generally); Kristen E. Boon, *"Open for Business": International Financial Institutions, Post-Conflict Economic Reform, and the Rule of Law*, 39 N.Y.U. J. INT'L L. & POL. 513, 522–26, 529, 534–39 (2007).

HeinOnline -- 10 Or. Rev. Int'l L. 370 2008

justice mandate gives them the necessary status to pursue their aims.

The observation that individuals do not act on their own is also true, however, at another level. As described above, there is what amounts to an epistemic community[20] or network[21] of post-conflict justice junkies that extends across post-conflict settings. It is a relatively small community. I do not know its size with any precision, but it is small enough that I have observed the same people pop up repeatedly in multiple national and organizational contexts. Thus, post-conflict justice junkies operate not just within institutions, but also within a network of other post-conflict justice junkies with whom they are connected, either directly or at several steps removed, through previous work in other post-conflict states.

Finally, I should note that the issues addressed here are relevant beyond post-conflict settings, for the kinds of networks or epistemic communities that I describe here are not limited to the post-conflict context. Rather, similar, and in some instances interrelated, groups and dynamics pervade international interventions in non-conflict contexts as well. For example, other scholars have described international NGOs working on development issues and the work of the U.S. Foreign Service abroad in terms that resonate with my descriptions here.[22]

IV
WHAT DO POST-CONFLICT JUSTICE JUNKIES DO?: TRIBUNAL-HOPPING AND WORK HABITS

Post-conflict justice junkie networks are formed and maintained through a practice that I call "tribunal-hopping." As

---

20 *See* Paul Schiff Berman, *A Pluralist Approach to International Law*, 32 YALE J. INT'L L. 301, 321–28 (2007); Peter M. Haas, *Epistemic Communities and International Policy Coordination*, 46 INT'L ORG. 1, 3 (1992); Janet Koven Levit, *Bottom-Up International Law-Making: Reflections on the New Haven School*, 32 YALE J. INT'L L. 393, 408–10 (2007).

21 *See* Baylis, *Reassessing*, *supra* note 8; *see also* Turner, *supra* note 13.

22 *E.g.*, Coles, *supra* note 4; Lauren G. Leve, *Between Jesse Helms and Ram Bahadur: Participation and Empowerment in Women's Literacy Programming in Nepal*, 24 POLAR POL. & LEGAL ANTHROPOLOGY REV. 108 (2001); Mark Schuller, *Seeing Like a "Failed" NGO: Globalization's Impact on State and Civil Society in Haiti*, 30 POLAR POL. & LEGAL ANTHROPOLOGY REV. 67 (2007). Autobiographical accounts by internationals also provide lively descriptions of their communities. *See, e.g.*, HOWARD SIMPSON, BUSH HAT, BLACK TIE: ADVENTURES OF A FOREIGN SERVICE OFFICER (1998).

HeinOnline -- 10 Or. Rev. Int'l L. 371 2008

one ad hoc international or hybrid criminal tribunal after another is established,[23] those interested in post-conflict justice issues hop quickly from one tribunal to the next, following a trail of new opportunities. They also move between these special tribunals and other post-conflict settings with opportunities for post-conflict justice work, like Kosovo, with its substantial international administration and hybrid atrocity trials, and the DRC, with a large body of international NGOs and national atrocity trials. Some post-conflict justice junkies work on trials at tribunals, but many are involved in other aspects of post-conflict justice work: investigating atrocities, promoting legislation to reform national laws, or training judges, attorneys, and police, for example.[24] Thus, while tribunal-hopping in its purest form is quite literally the movement from one ad hoc criminal tribunal to the next, the phenomenon encompasses movement from one post-conflict setting to another to do work on post-conflict justice issues, even if not strictly from or to a tribunal as such.

What are the salient characteristics of "tribunal-hopping" and of post-conflict justice work that shape post-conflict justice junkie networks and the knowledge of the individuals that

---

23 The International Criminal Tribunal for the Former Yugoslavia was established by U.N. Security Council Resolution 827, S.C. Res. 827 ¶ 2, U.N. Doc. S/RES/827 (May 25, 1993). The International Criminal Tribunal for Rwanda followed in 1994 under the auspices of U.N. Security Council Resolution 955, S.C. Res. 955, ¶ 1, U.N. Doc. S/RES/955 (Nov. 8, 1994). A number of hybrid courts and panels have since been created, including the Special Panels for the Prosecution of Serious Crimes in East Timor under UNTAET Reg. 2000/11(Mar. 6, 2000), *available at* http://www.un.org/peace/etimor/untaetR/Reg11.pdf; hybrid panels for prosecutions of war crimes and crimes against humanity in Kosovo, established by UNMIK Reg. 2000/6 (Feb. 15, 2000), *available at* http://www.unmikonline .org/regulations/1000/re2000_06.htm; the Special Court for Sierra Leone, pursuant to the Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone, U.N.-Sierra Leone, Jan. 16, 2002, *available at* http://www.sc-sl.org/Documents/scsl-agreement.html; and the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea (Extraordinary Chambers or ECCC), in which the Cambodian government and the United Nations cooperate under the Agreement between the United Nations and the Royal Government of Cambodia Concerning the Prosecution under Cambodian Law of Crimes Committed During the Period of Democratic Kampuchea (June 6, 2003), *available at* http://www.unakrt-online.org/Docs/Court%20Documents/ Agreement_between _UN_and_RGC.pdf.

24 *See* The Secretary-General, *Report of the Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, ¶ 12-13, *delivered to the Security Council*, U.N. Doc. S/2004/616 (Aug. 23, 2004).

HeinOnline -- 10 Or. Rev. Int'l L. 372 2008

comprise them?[25] I have identified two characteristics that arise fairly consistently: (1) short duration postings and (2) social-professional networks. Two additional characteristics arise less consistently but are nonetheless important: (3) narrowly defined work duties and (4) temporary local networks.

First, internationals (including but not limited to post-conflict justice junkies)[26] seem to stay one and a half to two years on average in conflict and post-conflict postings. Their stays may last as long as three years or more, or may be as short as a few months.[27] This is in part because the contracts offered by organizations operating in conflict and post-conflict zones are often short-term. For example, the employees of the Special Court of Sierra Leone, including the judges and attorneys, are employed on one-year renewable contracts.[28] Similarly, initial U.N. appointments to special peacekeeping missions are for six months and thereafter can be renewed for no longer than the duration of the U.N. mandate, which may be limited to six months or a year.[29] U.S. Foreign Service postings to hardship

---

25 It is of course impossible to accurately generalize across the disparate national and institutional settings I am discussing. Thus, I am aware that there are exceptions and counter-examples to each of the characteristics I describe. I am making these generalizations nonetheless because I believe that it is useful to focus upon some frequently recurring characteristics for purposes of understanding the dynamics that are often at work, so long as one keeps firmly in mind that these characteristics are not universal. Accordingly, when assessing these generalizations in any particular context, there may very well be exceptions warranting modification, deviation from, or abandonment of this model.

26 Throughout this Section, when I refer to "internationals" rather than "post-conflict justice junkies," it is because the available information is for the broader set of internationals in general, and not specific to post-conflict justice junkies.

27 This is my rough estimate based on my own observations and the data described below. I do not know of any hard data or empirical studies on this question.

28 John R.W.D. Jones et al., *The Special Court for Sierra Leone: A Defence Perspective*, 2 J. INT'L CRIM. JUST. 211, 223 (2004).

29 U.N. Peace Operations Recruitment Center Information Sheet, https://jobs.un.org/Galaxy/Release3/VacancyFM/RecruitmentInfo.html; Telephone Interview with Anonymous R, (Feb. 14, 2008) [hereinafter R Interview] (contact information and notes on file with author). A 2001 U.N. audit found that there was high staff turnover even within the six-month appointment period, comprising in one instance nine percent of the staff. The Secretary-General, *Report of the Office of Internal Oversight Services on the Audit of the Policies and Procedures of the Department of Peacekeeping Operations for Recruiting International Civilian Staff for Field Missions*, 13, *delivered to the General Assembly*, U.N. Doc. A/56/202 (July 20, 2001) [hereinafter 2001 Audit].

HeinOnline -- 10 Or. Rev. Int'l L. 373 2008

posts are typically two-year assignments that can be extended for an additional year.[30]

Another reason for the short stays is that moving to a new post-conflict zone may present an opportunity for junior staff to move up in rank and authority quickly. Recruiting personnel to post-conflict zones can be difficult for international organizations, particularly amongst the relatively small group of post-conflict justice junkies with legal expertise.[31] Thus, junior post-conflict justice junkies may abandon a former hot spot where the upper echelon jobs have all been allotted and flood a new hot spot where higher ranking opportunities have opened up.[32]

Next, as suggested above in my description of Freetown, post-conflict justice junkie networks are not purely professional, but also social. In each post-conflict setting, internationals form tight social communities in a relatively insular and privileged expat culture. These social communities overlap with, strengthen, and intensify any immediate working networks that have formed as well as the broader community of post-conflict

---

30 E-mail from Tracy Naber, Foreign Service Officer, U.S. State Dept., to Elena Baylis, Associate Professor, University of Pittsburgh School of Law (Mar. 6, 2008) (on file with author).

31 SCOTT N. CARLSON, U.N. PEACEKEEPING BEST PRACTICES REPORTS, LEGAL AND JUDICIAL RULE OF LAW WORK IN MULTI-DIMENSIONAL PEACEKEEPING OPERATIONS: LESSONS-LEARNED STUDY 9–11 (2006), http://pbpu.unlb.org/pbps/Library/ROL%20Lessons%20Learned%20Report%20%20March%202006%20FINAL.pdf.

32 The U.N. audit referenced above found that with an authorized staff of 5003 in all U.N. field missions, the recruitment office processed 4055 appointments in a 22 month period, suggesting extraordinary levels of movement in these offices and correlating to a rapid expansion of field missions during this period. 2001 Audit, *supra* note 29, at 5. The audit also reported that with this rapid expansion of missions came intense pressure to fill positions with little review of qualifications and references, suggesting a situation in which junior officers might have opportunities to move into positions of greater responsibility and prestige by transferring to new positions in the special peacekeeping missions as they became available that would otherwise be above their level of experience and expertise. *Id.* at 7, 12. In a follow-up audit, it appeared that some U.N. employees were receiving pay grade increases upon transferring that were greater than they would have been entitled to otherwise, suggesting an additional incentive to transfer between missions. The Secretary-General, *Follow-up Audit of the Policies and Procedures of the Department of Peacekeeping Operations for Recruiting International Civilian Staff for Field Missions*, 2, *delivered to the General Assembly*, U.N. Doc. A/59/152 (July 15, 2004). The estimate of one observer was that staff in U.N. peacekeeping missions tend to move every one and a half to three years, depending largely on the availability of opportunities elsewhere. R Interview, *supra* note 29.

HeinOnline -- 10 Or. Rev. Int'l L. 374 2008

justice junkies that exists across various post-conflict locations and times.[33]

Furthermore, in any particular post-conflict zone, internationals may find themselves tasked with mastering a relatively narrow set of work duties and a correspondingly narrow set of information relating to those duties. Their responsibilities may focus upon a particular situation or event and the associated locations and people; it is these aspects of the local setting that will accordingly come into relatively detailed view. For example, there were numerous attorneys working on each case at the Special Court for Sierra Leone. As such, attorneys were assigned not just to particular cases, nor even to individual defendants within that case, but to particular witnesses relating to particular individual defendants. Thus, they had become experts in the testimony of those witnesses, rather than necessarily on the case in general or on Sierra Leone as a whole. This is not to say that internationals learn nothing beyond what is strictly required by their work duties. Indeed, I would be surprised to learn that the attorneys described above did not, in fact, know a fair amount about the conflict in Sierra Leone. Rather, I suggest that, as is often true of experts in any field, internationals tend to develop detailed knowledge of the particular, at times highly compartmentalized, tasks to which they are assigned. They develop correspondingly detailed knowledge of those aspects of the local setting that are relevant to those tasks without a corresponding level of knowledge of the setting as a whole.

Although an international's work duties may be narrow, in at least some instances that work is facilitated by the development of temporary local networks focused on particular tasks. In the DRC, I observed internationals forming shifting partnerships with international and domestic actors working for institutions with overlapping mandates in order to deal with particular legal issues or situations. There was pluralistic participation in dealing with any given concern, whether proposing legislation, addressing a mass atrocity, or some other issue. However, I should note that this does not always seem to be the case. In Sierra Leone, by contrast, the internationals at the Special Court appeared to be relatively isolated from other institutions and

33 *See also* Coles, *supra* note 4, at 8–9.

focused entirely upon the cases before them with little input from outside.[34] There did not appear to be a lot of interaction even with institutions with related mandates, like the Truth and Reconciliation Commission.[35] These observations are commensurate with my suggestion elsewhere that hybrid networks of international and national actors may be more effective than hybrid courts at promoting productive transnational interaction.[36] However, it is impossible to say, with such a limited amount of information, whether there is in fact a correlation here.

In spite of the tentative nature of these observations about temporary local networks, I raise them here because they operate as a limit upon my previous claim about the narrowness of work agendas and because of their implications for the questions of knowledge that I discuss in the following Section. In both the DRC and Sierra Leone, those involved were focused upon particular incidents and issues, and developed expertise in the related people, laws, and other details. However, in the DRC, internationals tended to be exposed to a relatively wide range of contacts through their participation in transnational networks. While I do not know for certain, one might expect the knowledge developed in the DRC to reflect a broader variety of perspectives and thus to be less narrow and focused. Furthermore, the skills and knowledge that are required to successfully participate in those shifting local partnerships are different and more extensive than those that are required to operate in a singular institutional setting.

---

34 There is an outreach department at the Special Court, which is tasked with spreading information about the court and its work to the population as a whole. This department's work has been widely praised. However, the outreach department is not tasked with interacting with the national legal system or government institutions, nor with bringing information back to the court. Furthermore, below the managerial level, it is staffed almost entirely by Sierra Leoneans, not by internationals. David Cohen, *"Hybrid" Justice in East Timor, Sierra Leone, and Cambodia: "Lessons Learned" and Prospects for the Future*, 43 STAN. J. INT'L L. 1, 21–22 (2007).

35 The Truth and Reconciliation Commission (TRC) had just issued its report when I was in Freetown. The Special Court internationals with whom I spoke expressed a great deal of distress about the TRC's inclusion of poetry in its report, which they viewed as disrespectful to the suffering of victims and as evidence of the TRC's essential lack of seriousness about its mission.

36 *See generally* Baylis, *Reassessing*, *supra* note 8.

HeinOnline -- 10 Or. Rev. Int'l L. 376 2008

V
"KNOWN KNOWNS":[37] SIX TYPES OF KNOWLEDGE AND THEIR POSITIVE CONSEQUENCES

What are the implications of these characteristic patterns of post-conflict justice junkie behavior for the first question I posed: What can and do post-conflict justice junkies know? I have identified six types of knowledge that post-conflict justice junkies develop and take with them from one post-conflict zone to the next: analogical, technical, legal, networking, bureaucratic, and cultural knowledge. The development and transfer of these forms of knowledge is a notable contribution by post-conflict justice junkies to post-conflict justice. Nonetheless, as discussed below, post-conflict justice junkies' lack of local expertise represents a fundamental gap in their knowledge that significantly detracts from their post-conflict justice work.

A. Analogical Knowledge[38]

By definition, post-conflict justice junkies have experience working in multiple post-conflict settings. When they arrive in a new post-conflict posting, they bring with them their knowledge of these previous settings, the problems that have arisen, and the approaches and techniques used there. Upon arrival, they may be immediately confronted with various needs, often urgent ones. They see and understand their new situation and its demands by analogy to those past settings, identifying common patterns and features, or at least what they believe to be common patterns and features. New settings thus tend to take on the shape of previous experiences through the application of this analogical lens.

This is perhaps the most crucial type of knowledge for understanding the great strengths of post-conflict justice junkies' work in post-conflict settings, as well as their Achilles' heel,

---

37 "[T]here are known knowns; there are things we know we know." Hart Seely, *The Poetry of D.H. Rumsfeld: Recent Works by the Secretary of Defense*, SLATE, Apr. 2, 2003, http://www.slate.com/id/2081042/ (quoting Donald Rumsfeld, Dept. of Defense News Briefing (Feb. 12, 2002)).

38 This is a term that, as far as I can tell, was last used by Thomas Aquinas to suggest that humans could gain knowledge of God by observing the world. That is not, as should be obvious, the sense in which I use the phrase, and enough time has passed since Aquinas's use was in vogue that I feel comfortable recapturing the term for my own purposes. *See* William S. Brewbaker III, *Thomas Aquinas and the Metaphysics of Law*, 58 ALA. L. REV. 575, 608 (2007).

HeinOnline -- 10 Or. Rev. Int'l L. 377 2008

which is discussed at length below. Analogical knowledge is to no small extent what makes post-conflict justice junkies' experience in other post-conflict contexts useful to them. It represents, to invoke an old-fashioned and value-laden term, the opportunity to develop good judgment. Why so? Because these layered experiences offer post-conflict justice junkies the chance to produce a generalized map, symbol set, or tool kit (pick your metaphor) that they can then use to analyze and understand new settings by means of example and experience rather than by abstraction from reason and theory.

Of course, post-conflict justice junkies are not unique in making use of analogical knowledge. To some extent, everyone makes use of their previous experiences in understanding and acting in their present circumstances. What is significant is that post-conflict justice junkies deliberately, repeatedly immerse themselves specifically in post-conflict settings. They are thereby developing a set of experiences that are likely to be more relevant as a basis for analogical knowledge in post-conflict settings than the average person's past experiences, which have typically been formed either in non-conflict settings or perhaps in a single conflict or post-conflict setting. It is particularly telling that this sort of deliberate repeated immersion is the only way of developing such a cache of knowledge, for one does not typically find oneself repeatedly in a variety of post-conflict states by sheer chance (or at least, one would hope not to do so).

The comparative quality of this knowledge is important. One might expect that the most useful kind of knowledge should be non-analogical local knowledge, that is, immediate expertise. Without discounting the enormous value of local expertise, I contend that analogical knowledge is not merely a second-best approximate of local knowledge. Rather, it is an independently useful way of conceptualizing and categorizing experiences that may permit the importation of insights from other contexts and the recognition of important connections and dynamics that are not apparent to those immersed in a given setting. The difficulty of analogical knowledge is that applying it appropriately is a skill that requires a delicate touch; as discussed below, if wielded inappropriately, it can be a blunt and even destructive instrument.

HeinOnline -- 10 Or. Rev. Int'l L. 378 2008

B. Technical Knowledge[39]

Post-conflict justice junkies also convey technical skills and tools from one post-conflict zone to the next. The example above, in which a MONUC officer brought knowledge of how to conduct investigations of mass atrocities from one posting to the next, is a good example of the rapid transfer of technical knowledge.

Hearkening back for a moment to my discussion of the legal literature on knowledge at the outset of this Article, it seems to me that the importance of technical knowledge tends to be particularly underestimated in the legal literature. Instead, the literature privileges intellectual legal knowledge (which is next in this list) over what are regarded as practical technical skills. This may represent an understandable professional bias on the part of academics toward our own knowledge set. This basis is nonetheless obstructive, for technical skills are at least as important on the ground for achieving a just result through legal process as knowledge of legal texts. For example, according to one of my informants in the DRC, the Congolese police have not been trained how to carry out investigations. Without the ability to gather evidence, the police have relied upon obtaining confessions to resolve cases and, suspects being understandably reluctant to implicate themselves in the absence of evidence against them, a great many of those confessions have been obtained by torture.[40] In such a context, informing the police of the relevant human rights treaties forbidding torture is unlikely to produce changes in their interrogatory practices. Instead, MONUC brought in an Australian ex-police officer who runs an NGO in The Hague to train the Congolese police and MONUC investigators in legitimate evidence gathering techniques. While this approach hardly guarantees a change in police practice, it does at least provide a functional alternative.[41]

---

39 *See* Haas, *supra* note 20, at 11–12 (concerning the role of epistemic communities in conveying technical knowledge).

40 I do not mean to suggest that the use of torture is justified by the lack of alternative investigative techniques. To the contrary, my position is that it cannot be justified under any circumstances. I merely claim that the use of torture is both unsurprising and difficult to change in such a setting.

41 Interview with Anonymous A, Kinshasa, Dem. Rep. Congo (June 20, 2006) (notes on file with author). I have no information, however, on the success of this approach. *See also* Committee Against Torture, *Conclusions and Recommendations of the Committee Against Torture: Democratic Republic of*

C. Legal Knowledge

This is the form of knowledge that is most familiar and readily identifiable to lawyers and academics as valuable law-making knowledge. Post-conflict justice junkies typically know of, have used, and may bring with them in printed or electronic form treaties, statutes, case law, and other legal materials. While such materials are fundamental to legal work, they may not be available in post-conflict zones. For example, MONUC's legal officers are well-versed in the treaties concerning international criminal law and human rights law. Similarly, MONUC's headquarters in Kinshasa has copies of national and international law and other legal materials, as does the U.S. embassy library. Such materials are not readily accessible elsewhere in Kinshasa, where access to the internet and to published books, cases, and laws is limited.

D. Networking Knowledge

Post-conflict justice junkies have experience operating in shifting networks whose members are constantly moving and changing. They also have contacts from their prior missions, some of whom may be useful either because they also move to the new setting or because they have information or resources that can be imported.

E. Bureaucratic Knowledge

Because many post-conflict justice junkies operate within large and highly bureaucratized institutions like the United Nations, they are familiar with the routinized processes by which such organizations function. Such knowledge is necessary to make progress on any given task within or in coordination with institutions like the United Nations that often wield considerable power in post-conflict settings.[42]

Post-conflict justice junkies may also be familiar with the process of developing routinized procedures, and fundamentally, they are at least cognizant of the possibility of procedures being

---

Congo, U.N. Doc. CAT/C/DRC/CO/1 (Apr. 1, 2006) (concerning the regular use of torture by law enforcement personnel in the DRC); U.S. DEPARTMENT OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES 2007: THE DEMOCRATIC REPUBLIC OF THE CONGO (Mar. 11, 2008), *available at* http://www.state.gov/g/drl/rls/hrrpt/2007/100475.htm.

42 *See* Tolbert & Solomon, *supra* note 7, at 58.

HeinOnline -- 10 Or. Rev. Int'l L. 380 2008

routinized rather than a matter of personal discretion. Bureaucratization is surprisingly important to the development of rule of law. For example, while I was working in Ethiopia, one of the major reforms implemented by the Supreme Court was a color-coded filing system. The President of the Ethiopian Supreme Court described this to me as a huge step in ending what he called "a state of corruption." Previously the filing system was so complicated and non-transparent that it was trivially easy for clerks to "lose" files for the proper incentive. With the file lost, the case could not proceed and might be stalled indefinitely. Color-coded filing made the system so transparent that files could not be easily "lost." What had been an act of personal volition (searching for and finding a file upon request) became a bureaucratic act (pulling the file from its known location) that was both mundane and, crucially, achievable without the exercise of any discretion whatsoever.[43]

F. Cultural Knowledge

Post-conflict justice junkies are immersed in expat culture, human rights culture, and democracy-building culture, and should be adept in operating in these cultures.[44] International institutions play an important role in post-conflict zones, and these institutions are typically staffed by expats who are at least to some extent committed to the aims of promoting human rights and democracy. Accordingly, this cultural knowledge is also crucial to interacting successfully with those institutions in post-conflict contexts.

Post-conflict justice junkies develop these six kinds of knowledge through their work in post-conflict settings and convey them from one setting to another when they tribunal-hop. This has two positive consequences. The first is the quick spread of useful information from one place to another. This is particularly important in post-conflict contexts, where other mechanisms for the conveyance of information (e.g.,

---

43 Kemal Bedri & Elena Baylis, *Constructing Credibility*, 6 GREEN BAG 399, 403–04 (2003).

44 *See* Glen H. Fisher, *The Foreign Service Officer*, 368 ANNALS AM. ACAD. POL. & SOC. SCI. 71, 75–76 (1966) (describing the "third culture" of the "foreign multinational diplomatic community"); *see also* Jean-Klein & Riles, *supra* note 5 (international human rights law culture).

HeinOnline -- 10 Or. Rev. Int'l L. 381 2008

publications, the internet, media, modeling by functioning domestic institutions, or training) are not likely to be functional.

The second positive consequence is the gradual development of what amounts to a corps of post-conflict justice experts.[45] Importantly, this corps is relatively junior and is willing and often eager to move to new hot spots, unlike judges and other senior personnel whose expertise is sought in post-conflict settings. As I have argued elsewhere, the goals of post-conflict justice may more readily be achieved by deploying junior personnel with the experience and skills to successfully work in chaotic post-conflict settings than by deploying senior personnel who have greater rank and subject-matter expertise, but who lack post-conflict experience and skills.[46]

Many of these six types of knowledge are created through post-conflict justice junkies' immersion in post-conflict settings and institutions (i.e., cultural knowledge, legal and technical knowledge to some extent, and in some instances bureaucratic knowledge), and some require immersion in multiple settings to be fully developed (i.e., analogical knowledge and, to some extent, networking knowledge). The post-conflict justice junkie itinerant lifestyle of tribunal-hopping is therefore not merely incidental to, but constructive of, these forms of knowledge.

VI
"KNOWN UNKNOWNS":[47] WHAT POST-CONFLICT JUSTICE JUNKIES DON'T KNOW

What, on the other hand, do post-conflict justice junkies not know? Most importantly, they don't tend to know much about the particular situation they are in,[48] and so they tend to fill in the blanks in creative but not necessarily accurate or useful ways. This is the Achilles' heel of analogical knowledge: the analogy is

---

45 Such expertise is crucial to Haas' definition of an epistemic community, along with "a set of principled and causal beliefs[,] . . . shared notions of validity and a shared policy enterprise." *See* Haas, *supra* note 20, at 16.

46 *See* Baylis, *Reassessing*, *supra* note 8, § II.D.2.a: *Legal Pluralism*.

47 "We also know there are known unknowns; that is to say we know there are some things we do not know." Seely, *supra* note 37 (quoting Donald Rumsfeld, Dept. of Defense News Briefing (Feb. 12, 2002)).

48 This is, as suggested above, a point made by others studying the work of internationals in particular post-conflict contexts. It is not, however, either a universally shared perspective or a universal truth. *See* Louis Aucoin, *The Role of International Experts in Constitution-Making*, 5 GEO. J. INT'L AFF. 89, 94–95 (2004).

HeinOnline -- 10 Or. Rev. Int'l L. 382 2008

not always apt. To offer a metaphor of my own, like the old *New Yorker* cover featuring a New York resident's distorted view of the world shaped by its focus on New York City,[49] post-conflict justice junkies' use of familiar contexts to understand an unfamiliar situation can have a distorting effect on their understanding. Aspects of a new setting that are like places they have been before loom large in their view, tasks that are achievable with the tools they bring with them come into sharp focus, and other characteristics and needs either recede into nothingness or are reshaped to fit this prior knowledge.

Others have noted that internationals typically lack local knowledge of post-conflict settings, whether that is knowledge of the local legal system, local facts, local culture, or any other relevant local information. This is indeed a pervasive and, at times, crippling problem. The solution that is typically offered is that internationals should acquire more local knowledge.[50] That is certainly a good idea in the abstract, however, I contend that this lack of local knowledge is an inevitable consequence of the structure of international interventions. While some improvements in post-conflict justice junkies' local knowledge could be made on the margins, any real remediation of this problem is unachievable without revamping the entire institutional and political structure of international interventions or ceasing international interventions altogether—both highly unlikely prospects. I identify the following structural elements that prevent the acquisition of local knowledge: lack of time, false expertise, and complexity and size.

A. Lack of Time

When people work in a place for a short stint, as post-conflict justice junkies virtually always do, they lack the opportunity and incentive to develop much local knowledge. During one of my visits to Kosovo, I spoke to an American judge who was serving on a hybrid international-national panel in Kosovo for one year. He was a state court judge in the United States and was coming

49 Saul Steinberg, *View of the World from 9th Avenue*, NEW YORKER, Mar. 29, 1976, *available at* http://strangemaps.wordpress.com/2007/02/07/72-the-world-as-seen-from-new-yorks-9th-avenue/.

50 *E.g.*, Brooks, *supra* note 5, at 2334–37.

HeinOnline -- 10 Or. Rev. Int'l L. 383 2008

to the end of his year in Kosovo when we spoke.[51] During our conversation, he criticized certain elements of Kosovo's legal system as being holdovers from the communist era in Yugoslavia, when in fact they were ordinary aspects of many civil law systems, such as the use of judges in an investigative role. Such basic misunderstandings will inevitably arise in short visits to foreign settings, and moreover, they will inevitably arise repeatedly if an institution is continuously staffed with short-term international visitors. The initial problem of unfamiliarity with a local context is exacerbated by the lack of incentive to develop a deep understanding if one knows that one will move on in a short period of time to a new setting where this knowledge will not be directly useful.

As important as recognizing that short-term work has a detrimental effect on local knowledge (an unsurprising conclusion, to be sure) is the realization that the short-term nature of this work is not a happenstance, but part and parcel of the international system for intervening in post-conflict areas. The United Nations, NGOs, and other international institutions typically have only short-term commitments in such places. While these commitments may be repeatedly extended, as for example U.N. mandates frequently are, institutions nonetheless cannot offer their employees and contractors commitments that are longer than their own. Thus, as discussed above, the United Nations, NGOs, and the foreign service branches of governments typically offer short-term contracts or postings to conflict and post-conflict zones. These policies are tied to the realities of political authorization for involvement, of funding sources and limitations, and in the case of foreign service agencies, to longstanding beliefs about the necessity of periodically moving staff. These beliefs and realities are not likely to change. Unless the international community decides to stop intervening in new post-conflict zones, new opportunities will continue to open up for such work, and unless the international community develops a new willingness to maintain

51 I would not categorize this judge as a post-conflict justice junkie but rather as an international, as his work in Kosovo seemed to be a one-off; however, his experience is nonetheless representative of the general phenomenon of short-term work that is common to post-conflict justice junkies as well.

HeinOnline -- 10 Or. Rev. Int'l L. 384 2008

long-term administrations in troubled regions, old opportunities will continue to close.[52]

Furthermore, as discussed above, the short-term nature of this work is also intrinsically linked to the formation and conveyance of other forms of knowledge from place to place. If post-conflict justice junkies were to stay in one post-conflict location for five to ten years rather than one and a half to two on average, it would take substantially longer for the technical skills and other types of knowledge discussed above to be transferred from one place to another.

B. False Expertise

The corps of experts I mentioned above is not yet that large and people with no real expertise in areas that matter, like international criminal law, may be and have been deemed experts merely because they are foreigners with expertise in some area of the law. The risk of false experts is particularly high because the corps is weighted toward junior personnel. Junior post-conflict justice junkies appear to be far more numerous than their senior counterparts, but because they necessarily have limited experience at such an early stage in their careers, calling especially the most junior of them "experts" may stretch the meaning of the term too far.

At the senior level, true subject matter experts are both fewer in number and less likely to be interested in going to conflict zones. This has been a particular problem for hybrid tribunals, which rely upon foreign judges to participate in mixed international-national panels. There are very few judges with expertise in international criminal law, much less in trials for genocide, war crimes, and crimes against humanity, and even fewer who are willing to travel to post-conflict settings. The American state court judge I mentioned above very likely was an expert in state law and in the kinds of cases he had heard in the course of his pre-Kosovo career, but he was certainly not an

52 For example, there has been great pressure upon the ICTY and the ICTR to bring their trials to an end, even though each court still had a number of defendants remaining when this pressure began. Of course, the handful of cases that each court has handled is itself dwarfed by the number of possible cases and defendants. Thus, the courts' work had not come to any logical or obvious conclusion. Rather, it was the patience of the international community for this work, and its willingness to continue to commit financial and human resources to it, that had reached its end.

HeinOnline -- 10 Or. Rev. Int'l L. 385 2008

expert in international criminal law, civil law, Kosovo's law, or the kinds of cases that he was hearing in Kosovo.

C. Complexity and Size

Within each post-conflict setting, there may be multiple ethnic groups, multiple languages, multiple governments and legal systems in operation, multiple histories, and all kinds of logistical difficulties in going to, and learning about, each of these communities and systems. In the DRC, for example, there are 250 ethnic groups. The country is the size of the United States east of the Mississippi and has less than 300 miles of paved road. The only way to get around the country is by plane, and one literally takes one's life into one's hands by doing so, for the DRC has one of the worst airline safety records in the world.[53] Unsurprisingly, there is no information available about what is going on in many isolated regions of the country. A few NGOs have sent out teams to investigate local justice problems and solutions in the eastern regions, but this mapping is extremely limited in space and time. Additionally, this information may be of limited utility in such a dynamic situation where the facts on the ground may change before they can be incorporated into a comprehensive report. Furthermore, with widely disparate conditions on the ground, investigators cannot accurately generalize from one or two examples to the whole.

There are a number of unfortunate tendencies that may result from post-conflict justice junkies' lack of local knowledge. In my experience, three such tendencies are (1) the tendency to overreach and to simply deploy the tools and knowledge available, regardless of whether they are appropriate for the situation; (2) the tendency to treat one's lack of knowledge as actual *terra nullius* and to behave as if there is no law or quasi-legal process in operation if one does not know of it; and (3) the tendency to co-opt transitional justice cases, that is, to channel as much as possible into the international venues that are well known by the post-conflict justice junkie and away from unknown domestic settings.[54]

---

53 Reuters, *Congolese Airline Claims Most Passengers Survived Crash*, HERALD SUN (Melbourne, Austl.), Apr. 16, 2008, http://www.news.com.au/heraldsun/story/0,21985,23548004-663,00.html.

54 As for this last point, there are numerous substantive critiques of national courts. *E.g.*, Laura A. Dickinson, Notes and Comments, *The Promise of Hybrid*

HeinOnline -- 10 Or. Rev. Int'l L. 386 2008

However, it is important to remember that there are limits on the effects of these "known unknowns" and the resulting tendencies I have outlined. International institutions are not hegemonic in post-conflict settings and post-conflict justice junkies' lack of knowledge correlates to some extent with a lack of power. International influence is often strong where it intrudes, but there are many places where it does not intrude at all. In some instances these limits on international power are quite literally physical ones. For example, when I visited Sierra Leone, the Special Court's international presence was concentrated in the capital, Freetown. Mobility was particularly limited during the rainy season, when many of the roads became untraversable. As a consequence, the court was using radio reports to extend its reach as much as possible into rural areas. Similarly, in the DRC, the lack of transportation infrastructure makes it extremely difficult to travel from place to place. There are U.N. troops on the ground in the capital and in select locations elsewhere in the country. NGOs, U.N. officers, and others are similarly concentrated in Kinshasa and scattered elsewhere here and there, but there are vast regions of the country where international presence and influence are occasional at best.

In other instances, limits on international influence are legal, social, and political, rather than geographical. Where domestic institutions hold authority and exercise control, internationals may be limited to playing a supporting role. However, this is not a given in post-conflict settings. Here, contrast the situation in the DRC, which is under domestic rule, with that of Kosovo during the period of U.N. administration. In the DRC, the United Nations, NGOs, and foreign embassies have been occupied with supporting national trials and proposing legislation to the national parliament. In Kosovo, on the other hand, the Special Representative of the Secretary General exercised authority superior to all Provisional Institutions of Self-Governance.[55]

Courts, 97 AM. J. INT'L L. 295, 300–05 (2003). I do not mean by identifying this tendency to suggest that such critiques are subsumed by this preference for the known over the unknown. Rather, I contend that this tendency reinforces and complements the preference for the international that is also founded in part on substantive concerns.

55 *See* Baylis, *Reassessing*, *supra* note 8, § II.C.4: *Networks of International Organizations, Networks, and Others*; U.N. Mission in Kosovo, *On the Law*

VII
CONCLUSIONS

A. On Local Knowledge

First, I should reaffirm that the acquisition of local knowledge ought to be a critical aspect of international involvement in post-conflict settings. By examining the knowledge-creating and knowledge-conveying functions of tribunal-hopping, I do not mean to diminish the significance of the problems posed by intervening internationals' lack of local knowledge, problems which I consider to be both pervasive and of grave importance.

However, while I believe that intervening internationals should acquire local knowledge, I am skeptical that the post-conflict justice junkie subset will in fact acquire such knowledge on anything but a sporadic basis due to the countervailing incentives and structure of international interventions described above. Accordingly, instead of reiterating the calls for post-conflict justice junkies to learn more about the local settings in which they work, I offer three suggestions for mitigating the negative effects of post-conflict justice junkies' lack of local knowledge.

1. Acknowledge the "Unknown Unknowns"[56]

As Donald Rumsfeld has sagely noted, we should "know there are some things we do not know."[57] In this context, that means that post-conflict justice junkies should actively recognize that the limits of their own knowledge do not reflect the limits of reality and that, to the contrary, upon entering new contexts there is in fact very little relationship between the actions of which they happen to become aware and the total scope of relevant activities taking place. Rather than presuming their analogical knowledge to be apt and blinding themselves to those aspects of their current situation that do not match their expectations, they should be prepared to stumble upon processes

---

Applicable in Kosovo, U.N. Doc. UNMIK/REG/2000/59 (Oct. 27, 2000); *see also* Aucoin, *supra* note 48, at 94–95.

56 "But there are also unknown unknowns—the ones we don't know we don't know." Seely, *supra* note 37 (quoting Donald Rumsfeld, Dept. of Defense News Briefing (Feb. 12, 2002)).

57 *Id.*

HeinOnline -- 10 Or. Rev. Int'l L. 388 2008

and dynamics that are completely different than those encountered before.

2. Scale Back Expectations and Efforts at Control

The goals of post-conflict justice are lofty: end impunity, promote reconciliation, achieve accountability, and so on. These goals are also ultimately contingent on factors outside post-conflict justice junkies' control. Actively striving toward such unachievable goals tempts post-conflict justice junkies to make more of their local knowledge than there is to it and to overextend their reach in deploying their analogical knowledge in an attempt to understand, and thus to contain and control, local settings. I suggested in a recent article that rather than attempting to control atrocity trials by holding them in international courts or hybrid courts controlled by international judges, the international community should support and facilitate trials in national courts.[58] Like scaling back expectations, scaling back efforts at control and instead playing a supporting role will reduce the temptation to expansively interpret the scope of one's local knowledge. It may also provide opportunities to more effectively use other kinds of knowledge that post-conflict justice junkies may have in spades, such as technical, legal, and bureaucratic knowledge.

3. Focus on Areas of Technical, Legal, Bureaucratic, and Other Expertise[59]

Concomitantly, post-conflict justice junkies should affirmatively identify areas where they can offer "value added" through the conveyance of particular knowledge and skills. The need for police training in the DRC is an excellent example of this. So is the transfer and application of specific legal knowledge (treaties, case law, and so on), and the very careful use of analogical knowledge.

B. Restoring Dignity to the Post-Conflict Justice Junkies

Beyond these pragmatic suggestions for ameliorating the oft-acknowledged problem that internationals in general and post-

---

58 *See generally* Baylis, *Reassessing*, *supra* note 8.

59 *See* Tolbert & Solomon, *supra* note 7, at 57–61 (taking a similar approach to their proposals for reform of U.N. involvement in rule of law development).

HeinOnline -- 10 Or. Rev. Int'l L. 389 2008

conflict justice junkies in particular are neither domestic actors nor typically well-versed in domestic settings, I have several observations drawn from the discussion above. In this Article, I have at times described internationals and their pursuit of post-conflict justice in fairly flippant terms. Certainly the contrast between international and local lifestyles described at the outset of this Article provides ample material for such remarks.

But my conclusions concerning the post-conflict justice junkies should restore their dignity, at least to some extent, by contending that there is at least some utility and productivity to their tribunal-hopping habits. While I agree with previous commentators' observations concerning the detrimental effects of post-conflict justice junkies' lack of local knowledge, I argue that they also bring to each new post-conflict setting other forms of knowledge that contribute to their post-conflict justice work. Furthermore, I contend that these forms of knowledge are in no small part formed by their repeated, swift immersion in consecutive post-conflict settings. I also hope to defend post-conflict justice junkies' good character by noting that their tribunal-hopping ways and their corresponding lack of local knowledge are produced by the structural elements of international interventions. In moving so quickly from place to place, post-conflict justice junkies are responding rationally to the incentive structure created by international organizations rather than being driven solely by whims of their own.

Fundamentally, I argue that law-making knowledge, like law-making process, is broader than we have previously recognized, and includes not just legal knowledge but also analogical, technical, bureaucratic, and other forms of knowledge that contribute to post-conflict justice's extralegal goals. Furthermore, law-making knowledge inheres in and is transferred by individuals, albeit individuals operating within larger institutions and epistemic communities or networks. It is of course not practical to analyze these individuals one by one, but it is useful to recognize that if we had the time, energy, resources, and patience, that might be the proper way to go about understanding the development of post-conflict justice as we know it.

HeinOnline -- 10 Or. Rev. Int'l L. 390 2008