



ICRC

ADVISORY SERVICE

ON INTERNATIONAL HUMANITARIAN LAW

Punishing War Crimes: International Criminal Tribunals

International humanitarian law seeks to protect the victims of armed conflict and to limit the means and methods of warfare. Serious violations of this law constitute war crimes. Those responsible for such crimes must be tried and punished. In the 1990's two international criminal tribunals, the first for half a century, were established. These have the power to try war crimes committed in specific conflicts. Negotiations for the creation of a permanent international court resulted in the adoption of the Rome Statute of 1998.

Regional or international courts, such as the International Court of Justice, are an important means of resolving disputes and ensuring respect for international law. Such courts generally have jurisdiction only over States. With some exceptions, such as the Nuremberg Tribunal established after the Second World War, the conduct of individuals has been a matter for national courts. However, important moves have been made in establishing international criminal courts to try and punish individuals who have committed certain serious offences.

The *Ad Hoc* Tribunals

The United Nations Security Council, acting under Chapter VII of the United Nations Charter, has established two international criminal tribunals. These tribunals are "*ad hoc*" -- they have been set up to punish crimes committed in relation to two specific contexts: the former Yugoslavia and Rwanda.

The Hague Tribunal

The **International Criminal Tribunal for the former Yugoslavia**, based in the Hague (Netherlands), was established in February 1993 by Security Council Resolution 808. Its jurisdiction is limited to acts committed in the

former Yugoslavia since 1991 and covers four categories of crimes:

- (i) grave breaches of the Geneva Conventions of 1949;
- (ii) violations of the laws and customs of war;
- (iii) genocide; and
- (iv) crimes against humanity.

These crimes are defined in the Tribunal's Statute.

The Tribunal has issued indictments, formal accusations of crimes, against a large number of individuals. While most of these individuals remain at large, some have been detained and put on trial. The tribunal has already delivered a number of decisions on procedural and substantive issues. The first trial was concluded in May 1997.

The Arusha Tribunal

The **International Criminal Tribunal for Rwanda**, based in Arusha (Tanzania), was established in November 1994 by Security Council Resolution 955. Its jurisdiction is limited to acts committed in Rwanda, or by Rwandan nationals in neighbouring States, during 1994. It covers three categories of crimes as defined in the Tribunal's Statute:

- (i) genocide;
- (ii) crimes against humanity; and
- (iii) violations of common Article 3 of the 1949 Conventions and Additional Protocol II (these set out rules applicable to non-international armed conflicts).

The Arusha tribunal has also issued a number of decisions on legal issues. The first trial by the tribunal began in January 1997.

Each Tribunal has eleven judges, elected by the United Nations General Assembly from a list submitted by the Security Council, as well as a registrar, responsible for administration, appointed by the United Nations Secretary-General. The Tribunals share the same prosecutor, appointed by the Security Council on the nomination of the United Nations Secretary General, and the same appeals chamber.

Moves to a Permanent International Criminal Court

Since the 1950s the United Nations has been considering the establishment of a *permanent* international criminal court having jurisdiction over crimes regardless of when or where they were committed. Discussions were relaunched in 1994 when the United Nations General Assembly set up a committee to review a draft statute for an international criminal court, succeeded by a Preparatory Committee for the Establishment of a Permanent International Criminal Court. Discussions within the Preparatory Committee led to a Diplomatic Conference in Rome in 1998 which adopted the Statute of an International Criminal Court.

International Courts and States

States have clear obligations to cooperate with the Hague and Arusha Tribunals. This includes, where necessary, the enactment of legislation to ensure the collection of evidence and the arrest and transfer of those accused of crimes within the Tribunals' jurisdiction.

In addition, States are themselves obliged to bring persons accused of grave breaches of the principal humanitarian law treaties, the 1949 Geneva Conventions and 1977 Additional Protocol I for trial before their own national courts or to extradite them for trial elsewhere. There is still a clear obligation on States to bring to justice those accused of grave breaches and national courts will continue to have

an important role in the prosecution of war crimes.

International Courts and the ICRC

The International Committee of the Red Cross supports all efforts to promote respect for international humanitarian law and, in particular to punish war crimes. In this connection, it has strongly welcomed the establishment of the Hague and Arusha Tribunals and has actively participated in negotiations to establish a permanent international criminal court.

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