

International Criminal Justice Special Criminal Tribunals

LLM in International Studies

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The formation of ad hoc criminal tribunals

- The military tribunals after WWII by the allies set the example for special tribunals (Nuremberg & Tokyo)
- The most important step is the creation of two ad hoc International Criminal Tribunals for the former Yugoslavia (1993) & Rwanda (1994)
- Both created by the UN SC – example of the UNSC's competence
- Their competence
- Ratione materiae and ratione loci jurisdiction based on UNSC Resolutions

ICTY

- UNSC 827/1993 (25.5.1993) – the Special Tribunal had to adjudicate cases regarding flagrant violations of international humanitarian law committed from 1991 onwards in the territory of the former Yugoslavia
- UNSC 955/1994 (8.11.1994) – adjudication for the crime of genocide (addition)
- * issues regarding the legality of the Court's formation (how the judges were chosen) / general principles and safeguards of criminal justice

ICTY (2)

- Before the ICTY was established they had been several UNSC Resolutions
- UNSC 713/1991 – the Council condemns the violations of international humanitarian law and the practice of ethnic cleansing
- Attempts to facilitate the peacekeeping operations (special services / good offices)
- Embargo: both economic and in weapons in the entire area
- UNSC 724/1991, 752, 757, 758, 762/1992
- 10 August 1992: the then president of Bosnia and Herzegovina has sent a letter to the UN Secretary-General, stating the inability of his country to bring before justice those responsible for the commission of war crimes and violations of international humanitarian law committed on the state's territory
- Suggests the formation of a special tribunal

ICTY (3)

- UNSC Res 771/1992: requires states and international organizations to submit reports for potential IHL violations in the area & establishes the Committee of Experts to investigate the allegations
- Massive executions of civilians / murders / rapes / ethnic cleansing / torture / arbitrary detentions = necessary punishment for perpetrators
- UNSC 808/1993: the UN Secretary-General requires proposals for the establishment of a special tribunal
- Secretary-General: submits report which includes the Court's Statutes
- UNSC 827/1993 = adopted with consensus and without amendments the proposed Statute (Chapter VII) – establishment of a sub-organ to the UN of judicial character

ICTY (4)

- Role: both repressive and preventive (prevent the commission of new crimes & restoration, peacekeeping and peacebuilding)
- Formed in November 1993
- Ratione temporis & ratione loci = 1.1.1991 – sovereign territory of the Former Socialist Federal Republic of Yugoslavia
- Ratione materiae (subject matter jurisdiction) – articles 2-5 Statute – 4 categories of crimes (serious violations of the GC regime / violation of law and customs of war, crime of genocide, crimes against humanity)

ICTY (5)

- Two three-member first-instance chambers / five-member appeals court / independent members / four-year term / possibility of re-election
- Judicial scope: transitional justice
- Justice & democracy in post-conflict societies (national trauma, regional cooperation, bilateral relations)
- At first, there was no consensus on the expected impact of the establishment of the Court on the course of peace negotiations – they believed that it would endanger them
- ≠ Secretary-General – otherwise a return to normality is not possible
- Fiat justitia et pereat mundus ≠ fiat justitia ne pereat mundus

ICTY (6)

- 1st decision Dusko Tadic (indictment: rape, murder, ill-treatment, torture of Bosnian Muslims & Croat prisoners in the Omarska concentration camp)
- Defense counsel – pre-trial objection of incompetence – illegal establishment by the UNSC
- ICTY: rejected the objection – has no jurisdiction to review SC decision – political issue
- The appeal court disagreed with the position of the first court – ruled that it is competent to rule on the legality of its establishment
- Art. 41 UNCh: measures not involving the use of force
- + temporary nature of operation / deficient – fragmentary justice
- + impartiality (referral exclusively of Bosnian Serbs)
- + subsequent referral of Croats (Zagreb regime)

ICTY (7)

- Srebrenica Genocide
- Bosnian Serb National Assembly decides to create Bosnian Serb army
- Ratko Mladic was in charge when Radovan Karadzic was President
- Srebrenica Massacre 1995 – 8,000 Muslim civilians, men & young boys
- During the civil war, Bosnian refugees (20,000) fled there because it was under UN protection
- 100 Dutch peacekeepers (resignation of Dutch government)
- 11-18/7/1995 – Mladic, Karadzic, Milosevic
- Krstic case = characterized as genocide

ICTR

- Rwandan Independence 1963
- 2 main ethnic groups: Hutu & Tutsi
- 1993 Arusha Accords – power system between Rwandan government & Rwandan Patriotic Force (Tutsi paramilitary group)
- 1994 end of peace period (presidential plane shot down)
- 1994: 500,000 ~ 1,000,000 Tutsis massacred
- 10,000 ~ 100,000 Hutus massacred
- Mass killings over 3 months
- Rapes, torture, attacks

ICTR (2)

- 1994 UN: Secretary General establishes expert committee – evidence & conclusions on the possibility of acts of genocide
- UN Special Rapporteur on Rwanda
- Continued presence of alleged perpetrators undermined efforts to investigate the issue
- Ratione temporis: 1.1.1994 – 31.12.1994
- Internal case / threat to international peace and security (Chap. VII)
- Judges elected by the General Assembly

Complementarity principle

- Preamble – Art. 1 ICC “The International Criminal Court shall be complementary to the jurisdiction of national criminal courts”.
- Art. 17 +18 = priority of a case falling within their jurisdiction
- Art. 17 – conditions for admissibility of a case by the ICC
 - a) not being investigated by national courts
 - b) the State having jurisdiction has chosen not to prosecute a specific person
 - c) the national courts have already tried the person in question
- If national criminal courts are weak or unwilling

Complementarity principle(2)

- 17(2) – unwillingness: a) proceedings before national courts are conducted to protect a person from individual criminal responsibility, b) undue delay of proceedings, c) lack of impartiality
- 17(2) – inability: complete or substantial breakdown of national judicial system – presence of accused / evidence & testimonies
- ≠ former Yugoslavia + Rwanda = principle of priority