

INTERNATIONAL AND INTERNATIONALIZED CRIMINAL TRIBUNALS

"Impunity cannot be tolerated, and will not be. In an interdependent world, the Rule of the Law must prevail."
- U.N. Secretary General Kofi Annan during a visit to the International Criminal Tribunal for the former Yugoslavia in 1997

By holding individuals accountable, international and internationalized criminal tribunals have dismantled the tradition of impunity for war crimes and other serious violations of international law. These tribunals try individuals on the basis of their personal responsibility, be it direct or indirect, and regardless of rank. Personal responsibility is an important international development because it shields entire communities from being labeled as collectively responsible for others' suffering, thus paving the way for the reconciliation process within war-torn societies. International and internationalized tribunals are important players in the emerging architecture of international justice in which international, national and hybrid prosecutions should complement each other.



Courtroom of the International Criminal Tribunal for the former Yugoslavia: un.org/icty

The International Criminal Tribunal for the former Yugoslavia (ICTY)

The ICTY has played a major role in addressing impunity and, through its judgments and decisions, has contributed significantly to the development of international, humanitarian and criminal law, including by:

- defining notions of internal armed conflict and international armed conflict;
- identifying a general prohibition of torture in international law which cannot be derogated from by a treaty, internal law or otherwise;
- broadening the norms of humanitarian law to include crimes of violence against women;
- specifying the constituent elements of crimes against humanity, the crime of genocide and war crimes;
- establishing essential procedural innovations, particularly in terms of the protection of witnesses and command responsibility; and
- specifying the definitions of enslavement and persecution as parts of crimes against humanity, resulting in the first convictions after World War II for enslavement on the basis of a broadened definition.

What are international tribunals?

International criminal tribunals are courts established to try individuals accused of crimes recognized under international humanitarian law as committed in a specific place at a particular time. The Nuremberg and Tokyo Military Tribunals – the first international war-crimes tribunals - were established by the victorious Allies at the end of World War II to prosecute leading military and political leaders. In response to the shocking crimes which took place in both the former Yugoslavia and Rwanda, the U.N. Security Council established two ad hoc international criminal tribunals, one for the former Yugoslavia (ICTY) and another for Rwanda (ICTR), to bring the perpetrators to justice.

Successful convictions of political and military leaders are meant to deliver justice and to deter others from committing such crimes in the future. These international tribunals serve not only as an enforcement mechanism for violations of international humanitarian law, but also as an authoritative source of interpretation of this branch of law. The ad hoc tribunals have been limited to crimes committed in a particular territory and, unfortunately, have left many crimes committed in other territories unaddressed. This concern has spurred the establishment of the International Criminal Court (ICC).

What is the International Criminal Tribunal for the former Yugoslavia (ICTY)?

The ICTY was established in 1993, and has jurisdiction to prosecute war crimes, crimes against humanity and genocide committed after 1991 in the former Yugoslavia. The seat of the Court is located in The Hague, Netherlands. To date, 47 accused have been found guilty by the ICTY, and 8 have been acquitted or found not guilty on appeal. Twenty-four accused are currently on trial and 6 still remain at large. Over 3,500 witnesses have taken the opportunity to tell their stories while testifying in court. Through this, they have contributed to the creation of elements of a historical record. The Prosecution has also interviewed 1,400 other potential witnesses. This has given victims and witnesses a real sense that they and their communities are involved in the work of the Tribunal. Under the terms of the "completion strategy," the Tribunal completed all investigations and indictments at the end of 2004 and is expected to complete all cases, including appeals, by 2010. Tribunal Prosecutors have asked for the transfer of cases to local courts in the former Yugoslavia, a step that appears to be dictated by the tight deadline imposed by the "completion strategy."

What is the International Criminal Tribunal for Rwanda (ICTR)?

The ICTR has jurisdiction to prosecute people accused of genocide, crimes against humanity and war crimes committed in Rwanda between 1 January and 31 December 1994. The trial court for the Tribunal is located in Arusha, Tanzania, the appeals court is located in The Hague, and the Deputy Prosecutor is located in Kigali, Rwanda. To date, the Tribunal had handed down 22 judgments involving 28 accused. Eleven trials are in progress, involving a total of 27 accused. They include eight Ministers, one Parliamentarian, three Prefects, three Bourgmestres, eight military officers, and others holding leadership positions. The Tribunal still has 15 detainees to bring to trial, and 14 high-level accused remain at large. All trials are supposed to end by 2008, and the closing date for the court is set for 2010.

What are internationalized courts?

Internationalized courts are a mixture of national and international courts. They are sometimes called "hybrid courts." They commonly include both national and international staff and judges. Each internationalized court is unique in its composition and applicable law – incorporating both national and international law. These courts are located in the country where the crimes were committed, which means that justice can be seen to be done by the affected populations, rather than being transferred to far-away proceedings. Some examples of internationalized courts include the Special Court for Sierra Leone, the Extraordinary Chambers for Cambodia, the U.N. Interim Administration Mission for Kosovo and the Special Panels for East Timor.

What are the main differences between international tribunals and internationalized courts?

International ad hoc tribunals (ICTY and ICTR) are set up by the U.N. Security Council; they apply international law and hold trials outside of the country where the crimes were committed. Internationalized courts are usually a product of a treaty between the national government and the U.N.; they apply both national and international law and are located in the country where the crimes were committed. Both international tribunals and internationalized courts come with distinct advantages. In the cases of Rwanda and the former Yugoslavia, the national judicial systems had been completely destroyed during the conflict, which made setting up internationalized courts impractical. For internationalized courts to be effective, the national courts need to be at least partially functioning as internationalized courts are built upon them. Internationalized courts are less costly than international tribunals, and are more likely to contribute to the long-term development of the national judiciary.

Can internationalized courts serve as an effective mechanism for justice?

Yes, but is it essential that Internationalized courts ensure that : (1) flaws in national law are not copied over into statutes; (2) the strictest definitions of crimes under international law are used; (3) national judges are independent and impartial; (4) foreign judges and prosecutors are experienced in dealing with crimes under international law and have a strong commitment to fair and effective trials; and (5) defense lawyers and lawyers representing victims and witnesses have access to effective support programs.

What actions can the international community take in ensuring the effective operation of internationalized courts?

The international community should ensure that the courts are properly funded. In many cases, states have not been willing to make the contributions necessary to properly fund the courts. In other cases, the burden of the costs has been placed on the national state which has been unable to fund the courts fully. Moreover, the international community should ensure that persons indicted by internationalized courts are arrested and surrendered. In some cases, internationalized courts have been frustrated by the failure of states to arrest and surrender indicted person. For example, the government of Indonesia has failed to arrest and surrender persons accused of crimes in East Timor. The international community should also ensure that sufficient resources are provided not just to the internationalized courts, but also to rebuilding the national justice system to deal with the crimes. In the long run, national courts will be able to try more people at a lower cost and contribute to the protection of human rights and the rule of law.

Internationalized Courts and the International Criminal Court

Internationalized courts provide an opportunity to address part of the 'impunity gap' that still exists despite the creation of the International Criminal Court (ICC). In nearly all cases, internationalized courts cover crimes that fall outside the jurisdiction of the ICC. Moreover, since the ICC will only investigate and prosecute a small number of the most serious crimes under international law, those who commit the vast majority of these crimes (when committed in states that are unable or unwilling to investigate them) will remain unaccountable. As these crimes are often committed in countries that do not have fully effective and functioning national justice systems, a wide gap this exists into which many of these crimes fall, and their perpetrators escape justice.

For additional information, updates and actions:

Amnesty International, <http://www.amnestyusa.org/icc>
International Criminal Tribunal for the former Yugoslavia (ICTY), <http://www.un.org/icty>
International Criminal Tribunal for Rwanda (ICTR), <http://69.94.11.53/default.htm>
Special Court for Sierra Leone, <http://www.sc-sl.org>