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CRIS 2008 165-110 EuropeAid/126412/C/ACT/Multi

TRAINING MANUAL ON HUMAN RIGHTS AND HUMAN RIGHTS PROTECTION FOR LAWYERS

FILE N°23 : INTERNATIONAL CRIMINAL COURTS AND TRIBUNALS - OVERVIEW

➤ *The first post-war international tribunals*

As a result of the crimes committed during the Second World War, the victorious powers set up international tribunals with responsibility for prosecuting and judging war criminals.

The **Nuremberg Tribunal**, created on 8 August 1945 by the London Agreements, had authority to prosecute and judge Nazi war criminals for crimes against humanity, crimes against peace and war crimes.

The **Tokyo Tribunal**, created on 19 January 1946 on the order of General MacArthur, had authority to prosecute and judge Japanese war criminals.

The United Nations subsequently recognised the principles set out during these trials (Resolutions of the General Assembly of 13 February and 11 December 1946) : international criminal responsibility of individuals, no excuse related to the official capacity of the accused, no immunity, responsibility of superiors. They also initiated work aimed at drawing up a statute for a permanent criminal court.

➤ *The ad hoc tribunals in the 90s*

In reaction to serious violations of humanitarian international law in the former Yugoslavia and Rwanda, the Security Council, on the basis of Chapter VII of the United Nations Charter which enshrines the maintenance of peace and security, set up ad hoc courts (limited to a territory and for given period of time) for the purposes of prosecuting and judging the perpetrators of these crimes.

The **International Criminal Tribunal for the former Yugoslavia (ICTY)** was set up on 25 May 1993 (Resolution 827/93), for the purposes of judging persons presumed to be responsible for 4 types of crime committed in the Balkans from 1991 : serious violations of the Geneva Convention of 1949, violations of laws and customs of war, genocide and crimes against humanity.

The ICTY sits in The Hague.

The ICTY was scheduled to end its activities in 2010, however, the mandate of the judges has been extended. To date, 161 persons have been or are indicted and 63 have been found guilty and sentenced.



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The **International Criminal Tribunal for Rwanda (ICTR)**, was set up on 8 November 1992, for the purposes of judging persons presumed responsible for acts of genocide and other serious violations of international humanitarian law committed on the territory of Rwanda, and Rwandan citizens presumed responsible for such acts or violations of international law committed on the territory of neighbouring States between 1st January and 31 December 1994.

The ICTR sits in Arusha.

National courts may judge crimes which fall within the jurisdiction of the ICTR, which has a pre-emptive right over all these cases, even following a national judgement.

To date, 90 persons have been indicted or an arrest warrant has been issued against them, and 34 have been found guilty and sentenced.

There is competition of jurisdiction between these two national tribunals and national courts. However, the Tribunal has primacy over national courts. At any stage of the procedure, national courts may be officially requested to relinquish a case in its favour in accordance with the statute and its regulations.

➤ ***Internationalised criminal courts and tribunals set up in the 2000s***

Following the setting up of international criminal tribunals, other types of court have emerged which, in their composition or jurisdiction, comprise national and international elements. In Kosovo, East Timor, Bosnia Herzegovina and Cambodia, various institutions were organised within the framework of the national legal system. Moreover, the Special Court for Sierra Leone and the Special Tribunal for Lebanon are independent.

The **Special Court for Sierra Leone** was set up by a treaty concluded between the United Nations and the government of Sierra Leone on 16 January 2002.

It has jurisdiction to judge violations of international humanitarian law and violations of Sierra Leonean law committed in Sierra Leone since 30 November 1996.

It is composed of (mainly) international judges and Sierra Leonean judges, and its prosecutor is international (appointed by the UN Secretary General). Rules of procedure and evidence are similar to that of the ICTR.

It sits in Freetown. However, the trial of Charles Taylor is taking place in The Hague for security reasons, at the International Criminal Court.

To date, 13 persons have been indicted or an arrest warrant has been issued against them.

In parallel with the Special Court, a Truth and Reconciliation Commission was set up for the purposes in particular of providing a forum for the victims and perpetrators of violations of human rights. The Commission was composed of 7 members, of which 4 were from Sierra Leone and 3 international. The Commission had legal powers and could in particular summon witnesses to appear. The Final Report of this commission, which heard more than 8 000 witnesses, was presented on 5 October 2004.

The **Extraordinary Chambers in the Courts of Cambodia** were set up by an agreement concluded between the United Nations and the Cambodian government on 6 June 2003.

They have jurisdiction to judge former leaders of the Khmer Rouge for acts of genocide committed between 1975 and 1979.

They are composed (mainly) of Cambodian judges and international judges and have been assimilated into the Cambodian legal system. Rules of procedure and evidence consist of norms of national law which are complemented by norms of international law.

The **Special Panels in East Timor** were set up in 2000 by the United Nations Transitional Administration in East Timor.

They had responsibility for judging serious violations of human rights committed during the East Timor conflict in 1999.

They were composed of international judges and Timorese judges.

During the mandate of the Special Panels, from 2002 to 2005, 95 indictments were confirmed by the Special Panels against 392 persons, and 284 arrest warrants were issued. Of the 95 indictments, 57 relate to crimes against humanity. 55 trials have been conducted against 87 accused persons. Of these, 83 received sentences and one of the four persons acquitted has subsequently been sentenced by the Chamber of Appeal.

In spite of the fact that Special Panels have been closed, legislation in Timor Leste (new country which gained independence) aimed at punishing the perpetrators of serious crimes committed prior to independence remains in place, and the Court of the District of Dili has the jurisdiction to judge persons charged with crimes committed between 1st January and 25 October 1999.

The **War Crimes Chamber in Bosnia and Herzegovina**, was established on 9 March 2005.

Along with the Organised Crime Chamber and the General Crimes Chamber, it was assimilated with the Criminal Division of the State Court of Bosnia-Herzegovina, which sits in Sarajevo.

The Court of Bosnia-Herzegovina is composed of 54 judges: 48 are nationals and 6 internationals.

Apart from cases deferred by the ICTY, it also judges cases brought locally.

In **Kosovo**, since 2000, **judges** and **international prosecutors** have been assimilated into the Kosovan criminal legal system, in order to ensure that criminal trials are conducted in a manner which is independent, impartial and compatible with international law.

They have the same jurisdiction as local judges in criminal matters.

The **Special Tribunal for Lebanon** was set up by a UN Security Council Resolution (1757) of 30 May 2007.

It has jurisdiction to judge the attack on 14 February 2005 in Beirut against former Prime Minister Rafiq Hariri, which also resulted in the death of 22 other persons, as well as other assassination attacks carried out since 2004, in relation to this event.

It is composed of Lebanese and international judges, appointed by the UN Secretary General. It comprises a Pre-trial Judge, a Trial Chamber and an Appeals Chamber. The material jurisdiction of the Tribunal is governed by the provisions of the Lebanese Criminal Code relating in particular to the prosecution and punishment of acts of terrorism, and crimes and offences against life and limb. A distinctive feature of this court is the power it has to prosecute common law crimes.

The Tribunal has primacy over Lebanese courts.

This Special Tribunal provides for the option of judges to judge accused persons *in absentia*. It also provides for the Tribunal to hold collective trials. Victims will not be able to file civil actions in criminal proceedings, however, they will be able to make public their views and concerns.

On 17 January 2011, the Prosecutor presented an indictment to the Pre-Trial Judge, who then submitted a set of questions to the Appeals Chamber of the Tribunal. On 16 February 2011 the Chamber issued a decision, considering the submissions by the Prosecution and the Defence Office (oral and written), as well as the *amicus curiae* received. The Pre-Trial Judge has now to examine the evidence and decide if a trial has to take place.

Sources:

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-Site du Tribunal spécial pour la Sierra Leone: <http://www.sc-sl.org/>

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Last updated : 25th February 2011