

INTRODUCTORY TRAINING COURSE FOR HUMAN RIGHTS FIELD OFFICERS.

INTRODUCTION TO THE INTERNATIONAL
CRIMINAL TRIBUNALS & THE ICC:
JURISDICTION, APPLICABLE LAW

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INTERNATIONAL CRIMINAL COURT
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1945-1949



Nuremberg



1946-1948



Tokyo



1993-
Present
Yugoslavia

INTERNATIONAL CRIMINAL COURT FOR YUGOSLAVIA (ICTY)

- ❖ The establishment of the Tribunal is a judicial response to the demands posed by the situation in the former Yugoslavia, where appalling war crimes and crimes against humanity were reported to have been perpetrated on a large scale.
- ❖ The ICTY was set up by the Security Council in its Resolution 827 (25 May 1993) as an *ad hoc* tribunal in that it was not intended to be a permanent institution.
- ❖ It was the first international criminal tribunal ever to be established under Chapter VII of the UN Charter by the United Nations.

OBJECTIVES OF THE ICTY

- ❖ To do justice,
- ❖ To deter further crimes-by contributing to ensure that such violations [of international humanitarian law] are halted and effectively redressed.
- ❖ To contribute to the restoration and maintenance of peace- by holding accountable persons responsible for serious violations of international humanitarian law.
- ❖ The ICTY is not the only court that has jurisdiction over the categories of offences committed in the former Yugoslavia.
- ❖ It is not meant to deprive national courts of their criminal jurisdiction over genocide, war crimes and crimes against humanity.
- ❖ However, the Tribunal has been endowed with the power to intervene at any stage of national proceedings or investigations and claim primacy over them, whenever this proves to be in the interest of international justice.

JURISDICTION OF THE ICTY

- ❖ There are 4 jurisdictional criteria that have to be met for the ICTY to be competent over a case: *ratione personae*, *ratione materiae*, *ratione loci* and *ratione temporis*.
- ❖ Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (*ratione personae*, *ratione loci* and *ratione temporis*).
- ❖ Grave breaches of the Geneva Conventions of 1949, for example (*ratione materiae*),
 - ❖ willful killing,
 - ❖ torture or inhuman treatment, including biological experiments
 - ❖ taking civilians as hostages



1995-Present

Rwanda



INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (ICTR)

- ❖ The Security Council recognized that serious violations of humanitarian law had been committed in Rwanda.
- ❖ Acting under Chapter VII (Actions with respect to the threats to the peace, breaches of the peace and acts of aggression), of the United Nations Charter, decided to create the ICTR by Resolution 955 (8 November 1994).
- ❖ The ICTR has since delivered the first-ever judgment on the crime of genocide by an international court (Akayesu).

OBJECTIVES OF THE ICTR

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- ❖ To contribute to the restoration and maintenance of peace- by holding accountable persons responsible for serious violations of international humanitarian law.
- ❖ The ICTR is not the only court that has jurisdiction over the categories of offences committed in Rwanda.
- ❖ It is not meant to deprive national courts of their criminal jurisdiction over genocide, war crimes and crimes against humanity.
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JURISDICTION OF THE ICTR

- ❖ There are 4 jurisdictional criteria that have to be met for the ICTY to be competent over a case: *ratione personae*, *ratione materiae*, *ratione loci* and *ratione temporis*.
- ❖ The establishment of the Tribunal is a judicial response to the demands posed by the situation in Rwanda, where appalling genocide, war crimes and crimes against humanity were reported to have been perpetrated on a large scale.
- ❖ The ICTR was set up as an *ad hoc* tribunal by the Security Council in its Resolution 955 (8 November 1994) in that it was not intended to be a permanent institution.
- ❖ It was the second international criminal tribunal to be established by the United Nations.



1996-Present



Sierra Leone

SPECIAL COURT FOR SIERRA LEONE (SPECIAL COURT)

- ❖ The Court was established to bring to justice those most responsible for atrocities committed since 30 November 1996 in the territory of Sierra Leone.
- ❖ The Special Court was established by an agreement between the United Nations and the Sierra Leonean government.
- ❖ This court is termed a “hybrid court” based on the fact that it includes local officials and its seat is in the country of conflict (Freetown).
- ❖ The Special Court differs from the Truth and Reconciliation Commission (TRC) in that, the TRC cannot punish perpetrators of violence or order them to compensate victims.

JURISDICTION OF THE SPECIAL COURT

- ❖ There are 4 jurisdictional criteria that have to be met for the ICTY to be competent over a case: *ratione personae*, *ratione materiae*, *ratione loci* and *ratione temporis*.
- ❖ The Special Court prosecutes persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996. *ratione personae*, *ratione loci* and *ratione temporis*.
- ❖ Any transgressions by peacekeepers and related personnel present in Sierra Leone.
- ❖ Crimes against humanity (*ratione materiae*)
 - ❖ Persecution on political, racial, ethnic or religious grounds
 - ❖ enslavement
 - ❖ deportation
 - ❖ imprisonment

JURISDICTION OF THE SPECIAL COURT

Continued

- ❖ War crimes applicable to non-international armed conflict in violation of Article 3 common to the Geneva Conventions and of Additional Protocol II (*ratione materiae*)
 - ❖ Violence to life, health and physical or mental well-being of persons;
 - ❖ taking hostages;
 - ❖ outrages upon personal dignity, in particular:
 - ❖ rape,
 - ❖ humiliating and degrading treatment,
 - ❖ enforced prostitution and any form of indecent assault.

JURISDICTION OF THE SPECIAL COURT

Continued

- ❖ Other serious violations of international humanitarian law (*ratione materiae*)
 - ❖ Intentionally directing attacks against civilian population or against individual civilians not taking part in hostilities
 - ❖ Conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities.
- ❖ Crimes under Sierra Leonean law (*ratione materiae*)
 - ❖ Offences relating to the abuse of girls under the Prevention of Cruelty to Children Act, 1926 (Cap 31)
 - ❖ Offence relating to the wanton destruction of property under the Malicious Damage Act, 1861

THE NEED FOR THE CREATION OF AN INTERNATIONAL CRIMINAL COURT

- ❖ Although the work of the tribunals are extremely important, they are faced with several limitations:
 - ❖ They are temporary
 - ❖ They are limited geographically
 - ❖ They are created largely in response to events in the past
 - ❖ Their establishment depends on the will of the political community and may involve substantial costs and delays
- ❖ The above inabilities coupled with;
 - ❖ The inability or unwillingness of national jurisdictions to prosecute such crimes or
 - ❖ The inadequate ways in which they have dealt with them necessitated the establishment of a permanent criminal court

THE CREATION OF THE ROME STATUTE

- ❖ In 1998, the Rome Statute establishing the International Criminal Court (ICC) was adopted.
- ❖ There are 139 signatories to the statute and so far 106 nations have ratified it
 - ❖ 30 African countries have ratified or acceded to the statute as of this date.
- ❖ The ICC is aiming for universal ratification



2003 - present



International Criminal Court

From Rome to The Hague

1. Results of the Rome Conference (1998) :



•The Rome Statute of the International Criminal Court was adopted by the Plenary on 17 July 1998 at 22:50 hrs. in Rome, Italy

•Votes: YES: 120, No: 7, Abstention: 21

From Rome to The Hague

2. The Preparatory Commission (PrepComII)



PrepComII Results

1. **Rules of Procedure and Evidence;**
2. **Elements of Crimes;**
3. **Draft Relationship Agreement** between **Court** and **United Nations;**
4. **Headquarters Agreement** to be negotiated between the Court and the host country;
5. **Financial regulations** and rules;
6. **Agreement on the Privileges and Immunities** of the Court;
7. **Budget** for the first financial year;
8. **Rules of Procedure of the Assembly of States Parties.**

States' Support and Cooperation

After the Rome Conference

YES: 120, Abstention: 21, NO: 7

120

ENTRY INTO
FORCE: 1ST

JULY 2002

AFTER THE

60TH

RATIFICATION

After the PrepComII

Signatures

Now

Ratifications

139

106

- Under international law, a State is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty [Vienna Convention on the Law of Treaties 1969, art. 18(a)]
- Obligation of States Parties to cooperate with the Court in its investigation and prosecution of crimes. [ICC Statute, Art. 86]
- Court relies on cooperation of States in the search for evidence and witnesses and the arrest of suspects, since the Court does not have enforcement mechanisms of its own.

OVERVIEW OF THE ICC



How is the ICC constituted?

- Presidency
- Chambers
- Registry
- OTP

What is new & different about the ICC?

- The Assembly of State Parties (the legislative body of the Court) (Art.112)
- Participation of Victims (Art.68)
- Reparation for victims (Art.75)
- Establishment of a Trust Fund for Victims (Art. 79)
- Equal gender balance both among judges and staff of the Court (Art. 36(8)(a)iii & (b))

The Presidency



First Vice-President:
Judge Akua
KUENYEHIA (Ghana)

President:
Judge Philippe KIRSCH
(Canada).

Second Vice-President:
Judge Rene Blattmann
(Bolivia)

Functions of the Presidency

1. The Presidency is responsible for the proper administration of the Court, with the exception of the Office of the Prosecutor.
2. The Presidency also has other functions [Art. 38(3)(b)] , for instance:
 - to propose increases and reductions in the number of judges;
 - to negotiate and conclude Cooperation Agreements on behalf of the Court [**Regulation 110(1)**];
 - to take decision to impose disciplinary measures on judges, the Registrar and the Deputy Registrar [**Art. 47**]; and
 - to enforce sentences [**Part 10 of the Rome Statute**].
3. The judges appointed to the Presidency also serve as judges in their respective chambers.

Activities of the Presidency

- Convening plenary sessions of the Judges;
- Constitution of Chambers;
- Assigning situations to Chambers;
- Approval of forms for victim participation and reparation;
- Enquires about States that would be placed on list of States willing to accept persons sentenced to a term of imprisonment;
- Negotiation and conclusion of various agreements on behalf of the court;
- Promotion of public awareness and understanding of the Court;
- Swearing in of newly elected judges in March 2006

Constitution of the Divisions



Pre-Trial Division

Main Functions

- Authorizes the Prosecutor, upon request, to commence an investigation *proprio motu* [Art. 15(3)&(4)]
- Authorizes specific investigative steps without securing cooperation [Art. 57(3)(d)]
- Conducts the initial proceedings before the Court [Art. 60]
- Orders measures when there is a unique investigative opportunity [Art. 56]
- Reviews the Prosecutor's decision not to investigate or to prosecute on the basis of the 'interest of justice' [Art. 53(3)]

- Provides for the protection of victims and witnesses and national security information, and the preservation of evidence [Art.57(3)(c), Art. 68 & Art. 72]
- Protects the rights of the defense. [Art. 56(1)(b) & (3)(a)]
- Issues arrest warrants or summons to appear. [Art. 58]
- Initiates arrest proceedings in the Custodial State. [Art. 59]
- Confirms the charges on which the Prosecutor intends to seek trial. [Art. 61]
- Decides preliminary rulings concerning admissibility at the request of the Prosecutor. [Art. 18 & Art. 19]

Pre -Trial Division

Current Assignments

PTC 1: Assigned with the situations in the Democratic Republic of Congo and Darfur (investigations have been initiated)

PTC 2: Assigned with the situation in Uganda (investigation has been initiated)

PTC 3: Assigned with the situation in the Central African Republic

Main Functions

Trial Division

- Determines the **place of trial** and the **language(s)** to be used at trial. [Art. 62 & Art. 64(3)(b)]
- Decides reparations to victims. [Art. 75]
- Decides the sentence. [Art. 74]
- Ensures that the trial is fair and expeditious and is conducted with full respect for the rights of the accused [Art. 64(2) & Art. 67]
- Prepares and conducts the hearings.
- Hears the evidence and arguments of the Parties.
- Refers preliminary issues to the Pre-Trial Chamber [Art. 64(4)]
- Requires evidence and assistance of States [Art. 64(6)(b)]
- Provides protection for the accused, witnesses, victims and confidential information. [Art. 68, Art. 72, Art. 64(6)(e) & (c)]

Main Functions

Appeals Division

Revises the decisions of the Pre-Trial or the Trial Chamber.
[Arts. 81, 82 & 84]

Three main proceedings:

- **Appeal** against the sentence [Art. 81]
- **Revision** of sentence [Art. 84]
- **Interlocutory appeals** [Art. 82]

Main Functions (Continued)

Appeals Division

Interlocutory Appeals [Art. 82]

- **At the request** of the **Prosecutor**, the **defense**, the **State concerned** or the **victims**.
- **On issues related** to decisions that would affect the **fair and expeditious** conduct of the proceedings or trial; **jurisdiction or admissibility; reparations to victims; release** of the accused; **preservation of evidence**; or Pre-Trial Chamber decisions authorizing the Prosecutor to take **investigative steps** in the territory of a State Party without securing the cooperation of the State.

Activities of Chambers

- Preparation to ensure that proceedings are fair, independent, impartial and efficient;
- Recruitment of legal and administrative staff;
- Adoption of a Code of Judicial Ethics;
- Preparation of the technical aspects of proceedings
 - Disclosure of documents
 - Presentation of evidence
 - Translation and interpretation issues relating to the defense or the accused
- Conducting proceedings (hearings and deliberations)
- Making decisions (e.g. Decision on victims participation 17 January 2006)

THE REGISTRY



Registrar - Silvana Arbia

The Registry is responsible for the **non-judicial aspects of the administration** and servicing of the Court. **[Art. 43]**

Registry has:

- Office of the Registrar;
- Common Administration Services Division;
- Division of Court Services;
- Division of Victims and Counsel.
- Legal Advisory services
- Security services

Activities of the Registry

- Ensuring that the administrative structure meets the Court's needs:
 - Preparation of the Court's yearly budget submissions;
 - Issued policies and rules, e.g. Staff rules;
 - Finalization of the courtrooms.
- Guaranteeing victim's rights:
 - Creation and setting up of an Office of Public Counsel for Victims;
 - Creation of standard application forms for Victim participation and reparation;
 - Setting up a trust fund.
- Raising awareness of the Court:
 - Creation of a Document Center;
 - Organizing seminars and workshops.

Activities of the Registry Continued

- Ensuring due respect for the rights of the accused:
 - Creation of the Office of Public Counsel for the defense;
 - Creation of a draft code of professional conduct for counsel.
- Field Operations:
 - Setting up field offices;
 - Finding safe premises;
 - Installing secure equipment;
 - Conducting training programs for local police, media defense lawyers, NGOs to strengthen and build local networks;
 - Setting up channels of communication.

Office of the Prosecutor

[Art. 42]

- Receives referrals and any substantive information on crimes within the jurisdiction of the Court.
- Examines such referrals and information; and
- Conducts investigations and prosecutions before the Court, as necessary.

Prosecutor

Luis Moreno Ocampo



Activities of the Office of the Prosecutor

- Creating an office
 - Recruitment of staff;
 - Development of legal tools to ensure that work is carried out efficiently.
- Engaging in consultation and dialogue with stakeholders in the development of guiding strategies
 - Conducting a public hearing to receive input on general strategy and priority tasks;
 - Series of consultation processes with criminal justice experts;
 - Conducting consultations with State parties, United Nations and Non-governmental organizations.

Activities of the Office of the Prosecutor Continued

- Launching operational activities
 - Initiating investigations into four situations (Democratic Republic of Congo, Uganda, Darfur- Sudan, Central African Republic)
 - Over 50 trips each into Uganda and the Democratic Republic of Congo.
- Collecting information on eight other situations of concern (E.g. Georgia)
- Investigating and examining complaints and referrals
- Concluding cooperation agreements with:
 - Uganda,
 - The Democratic Republic of Congo,
 - The International Criminal Police Organization (Interpol), etc.

The Actors in the Proceedings



JURISDICTION OF THE COURT

- The ICC is a treaty based institution created with the consent of those who will be subject to its jurisdiction.
- The ICC's jurisdiction is complimentary to that of States and thus narrower than the jurisdiction that individual states are entitled to exercise in respect of the same crimes.
- The Rome Statute seeks to limit the ability of the ICC to try cases over which it has jurisdictions, thus the State's own courts are required to prosecute offenses that may fall within the jurisdiction of the ICC.
- The ICC will only take over when the domestic jurisdiction is unwilling or unable.

JURISDICTION OF THE ICC Continued (ratione materiae)

- The jurisdiction of the court covers genocide, crimes against humanity and war crimes.
- It will also have jurisdiction over the crime of aggression once the States Parties have adopted a provision to define the crime.
- Any definition and the condition for the exercise of jurisdiction must be consistent with the UN Charter.

JURISDICTION OF THE ICC Continued (ratione temporis)

- The jurisdiction of the court is over crimes committed after 1 July 2002, which is when the statute came into force.
- For states that became party to the Statute after its entry into force , the court may exercise its jurisdiction only with respect to crimes committed after the entry into force of this statute, unless that State has made a declaration permitting the court to extend its jurisdiction to include the period the state had not yet ratified the statute.

JURISDICTION OF THE ICC Continued

(ratione loci and ratione personae)

- The court has jurisdiction over crimes committed either by a national of a state party to the Rome statute or on the territory of a state party.
- Under article 27 no immunity can be asserted on the basis of official capacity.
- Commanders and superiors can be held liable for criminal offences committed by their subordinates.
- The court's jurisdiction is limited to persons aged 18 and above at the time of the alleged commission of the crime.

JURISDICTION OF THE ICC Continued

- It is crucial for the court to achieve universality by way of further ratifications since that is the only way for it to have completely effective jurisdiction in respect of serious international crimes.
- There are three ways to trigger the Court's jurisdiction:
 - By way of a referral to the Prosecutor, by a State Party pursuant to article 14;
 - The Prosecutor acting on of "his/her own initiative with authorization of the pre-trial chamber in accordance with article 15 of the Statute; or
 - A referral by the Security Council, acting under chap 7 of the UN Charter, of a situation to the Prosecutor.

APPLICABLE LAW

- Article 21 of the Rome Statute provides the hierarchy for the laws to be applied by the court;
 - In the first place the Statute, Elements of Crimes and the Rules of Procedure.
 - In the second place, the appropriate treaties and the principles and rules of international law including the established principles of the international law of armed conflict.
 - Failing that, the general principles and rules of law as interpreted in previous decisions.

The role of the Court & other International Criminal Tribunals in Peace process

- Justice is very much an integral part of peace. There can be no sustainable peace without justice;
- To fulfill its obligation under the Rome Statute, a State Party has to have the structures in place to try the crimes over which the Court has jurisdiction under the principle of complementarity, hence there's an indirect promotion of an efficient and reliable national justice system.
- Prosecution is the most effective answer to international crimes and it will contribute to strengthening and consolidation of post-conflict societies. Other alternatives are amnesty and truth commissions.
- Individualizing guilt is necessary, as one cannot punish an entire society and collective criminal responsibility will likely render more difficult any effort at reconciliation between warring parties.

The role of the Court & other International Criminal Tribunals in Reaching impunity

- They are a part of the process of ending impunity for the most serious crimes of concern to the international community.
- The existence of a permanent International Criminal Court puts all current and future perpetrators of serious violations of international humanitarian law on notice that they will not escape the arm of the law. No one is above the law (rule of Law).
- The establishment of the ICC will have the following impact :
deterrence, the establishment of an historical record of atrocities, the individualizing, and corresponding decollectivizing of guilt, and the consolidation of domestic and international criminal norms.
- For States that have ratified the Statute, there is an obligation to ensure that they have judicial and other allied processes in place to try the crimes over which the Court has jurisdiction under the principle of complementarity.

The role of the Court & other International Criminal Tribunals in Human rights issues

- They serve as a preventive safeguard if peace negotiations fail during a conflict, as civilians would still have a protection against human rights abuses, and to that extent aids protection of human rights.
- They provide incentives and guidance for countries that want to prosecute those responsible for the most serious international human rights crimes in their own courts;
- They offer permanent back up in cases where countries fail to try these criminals themselves, because of violence, intimidation, or a lack of resources or political will.

THE END

- Thank you.
- Any Questions?