



# International Courts and Tribunals and (Transitional) Criminal Justice

Impact of the quest for  
justice in post-conflict  
societies



# Measures for Righting Wrongs

- **Political measures:**
- Public criticism;
- Withholding of economic aid/technical assistance/commercial boycotts;
- Refusal of admission to international organizations (EU);
- Other (smart) sanctions.
- **Quasi-judicial and judicial measures:**
- Truth and reconciliation commissions;
- Trials before domestic courts;
- Trials before international courts and tribunals (ICTs) or hybrid courts.



## Diaspora's Role in Conflicts

- Diaspora and Conflict: Peace Builders or Peace Wreckers?
- Part of the problem and of the solution;
- Democratic deficit of diaspora politics;
- Important to promote dialogue with and within the diaspora as part of outreach programs of ICTs);
- Secure and improve the effects of remittances;
- More research is necessary to understand the effect of the diaspora in homeland conflicts (INFOCON).



# Accountability for Serious Crimes

- **International Courts and tribunals:**
- IMTN/IMTFE, ICTY/ICTR, ICC
- **International/ised – Hybrid courts and tribunals:**
- Sierra Leone: Special Court (2002)
- Bosnia:
  - Human Rights Chamber (until 2003)
  - War Crimes Chamber (2003)
- Timor Leste: Special Panels of Dili District Court (2000)
- Kosovo: Mixed Panels in the Courts of (2000/64)
- Iraq: Special Tribunal (2003)
- Cambodia: Extraordinary Chambers (2003).

# Nuremberg Military Tribunal

London  
Charter  
(1945),  
Nuremberg,  
Germany





# ICTY

SC Res. 827  
(1993), The  
Hague, The  
Netherlands





# ICTR

SC Res. 955  
(1994)  
Arusha,  
Tanzania





## Int'l Criminal Justice Dilemmas

- What is the relevant legal order? Civilian or military? International or national?
- To what extent ought understandings of criminal responsibility be projected backwards?
- Who should be held to account and for what offense?
- Is the criminal justice project hopelessly *ex post*?





# Objectives of International Criminal Justice

- Deterrence;
- Retribution;
- Reconciliation;
- Truth-telling;
- Narration of historical tragedy.



## Deterrence?

- ICTY was established in 1993, while Srebrenica, where 8-10 thousand persons were killed in about five days, happened in July 1995.
- ICC established in 1998 – massacres still ongoing in Sudan, Democratic Republic of the Congo, Uganda, and elsewhere.



## Retribution?

- Sentences at ICTY lower than if trials were conducted according to Yugoslav criminal law;
- Number of persons tried borders on the insignificant (116 cases completed – ICTY, 45 ongoing; ICTR – 37 cases completed; 38 ongoing).



## Reconciliation?

- Generally persons of different ethnicities see the work of the ICTY/ICTR as biased against them;
- Their activity has barely helped open up a wider debate within the respective societies about the what, why, and lessons to be learned.

## Burning a Judge Robe in Mitrovica, Kosova

Reconciliation??  
Demonstrations  
after the ICTY  
acquitted the  
former PM of  
Kosova, Mr.  
Haradinaj (April  
2008).





## Other Functions for Int'l Crim. Justice

- Acting as a catalyst for national war crimes prosecutions: the ICC and fighting impunity in the Congo;
- Building/strengthening the rule of law in shattered societies;
- Influencing/steering political processes of reconciliation within a country?
- An agent for social progress?



## *Ad hoc* Tribunals' Accomplishments

- 1. Spearheading the shift from impunity to accountability;
- 2. Establishing the facts;
- 3. Bringing justice to thousands of victims and giving them a voice;
- 4. The accomplishments in international law;
- 5. Strengthening the *Rule of Law*;
- 6. '*Never again*' – ICTR.



## Problems of *ad hoc* Tribunals

- Selective justice;
- Funding/Costs of International Criminal Justice (over 2 billion \$ have been spent so far by ICTY/ICTR, e.g. ICTR biennial budget for 2008-2009 of \$267,356,200 gross);
- Slow pace of arrest and prosecutions (ICTR - twenty-seven judgments involving thirty-three accused 1997-2007);
- Surrender and/or arrest of suspects (ICTY – 2 still at large, ICTR – 14).





## ICC – Heralding a New Era?

- Seven arrest warrants are outstanding: four for **Uganda**, two for Darfur, the **Sudan**, and one in the situation in the **Democratic Republic of the Congo**.
- **Central African Republic** – Jean-Pierre Bemba arrested.
- 108 State parties to the ICC Statute.



## Problems at the ICC

- The ICC is dealing with four situations;
- Three self-referrals, Uganda, DRC, Central African Republic (Art. 14 – ICC Statute);
- A referral by the SC, Sudan (Art. 13(b) o ICC Statute);
- Lubanga Dyilo's case;
- Indictment against Al Bashir (July 2008).



## What Role for ICTS?

- Drawing a line between regimes/ affirming democratic transition;
- Stressing the primacy of individual rights and responsibilities;
- Equality before the law/providing justice to victims;
- Strengthening/ promoting the rule of law in post-conflict societies.



## Concluding Remarks

- International Criminal Justice is not a cure all remedy;
- Rebuilding a society requires much more than just punishing perpetrators of serious violations;
- All relevant actors, international, regional and domestic should act in concert;
- Diaspora can play an important role in building war torn societies.



## Recommended Literature

- Kingsley Chiedu Moghalu, *Global Justice: The Politics of War Crimes Trials*, Stanford University Press, 2008
- Ruti G. Teitel, *Transitional Justice*, Oxford University Press, 2000
- Jane Stromseth *et al.*, *Can Might Make Rights? Building the Rule of Law After Military Interventions*, Cambridge University Press, 2006
- Hazel Smith and Paul Stares (eds.), *Diasporas in Conflict: Peacemakers or Peace Wreckers?*, United Nations University Press, 2007