

# Yearbook

# 1995



United Nations  
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International Criminal Tribunal  
for the former Yugoslavia  
Tribunal Pénal International  
pour l'ex-Yougoslavie

International Tribunal for the Prosecution of Persons Responsible for Serious  
Violations of International Humanitarian Law Committed in the Territory of  
the Former Yugoslavia since 1991

# **YEARBOOK**

## **1995**

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## PREFACE

**I**n this account of the activities of the Tribunal on its second anniversary, a discussion of the story of its birth seems otiose. Suffice it to say that the Tribunal has come of age less than fifteen months of its birthday and it is taking its place among the judicial institutions of the international community. This is not without the genius, devotion, dedication to duty and exemplary application of ingenuity of the principal officers of the Tribunal. Relying on evidence of the existing models, the operators of the Statute and Rules of Procedure and Evidence continue to learn from their activity and to create new models to suit new, challenging situations.

This Yearbook is a historical record of the work of the Tribunal for the year 1995. It is divided into seven chapters. Chapter I, which is a general presentation on the jurisdiction of the Tribunal, ends with a statement of the additional appellate jurisdiction vested in the Tribunal by the Statute of the Rwanda Tribunal. In Chapter II, the general organisation and functions of the organs of the Tribunal, namely, the Chambers, the Office of the Prosecutor and the Registry are discussed. Chapter III, which deals with the activities of the organs of the Tribunal, sets out in some detail the endeavours of each of the constituent departments of these organs during 1995. This Chapter approaches the discussion of the Chambers from both the regulatory and the judicial angles. A combination of the two gives to the reader the plenitude of the involvement of the Chambers in the activities of the Tribunal. Chapter III also discusses the activities of the Prosecutor in terms of investigation of crimes, prosecutions, and contact with states and other organisations. With respect to the Registry, this Chapter discusses the contribution of the Press and Information Office in disseminating information about the Tribunal. It also mentions the Administrative Services, and the Judicial Support Services, consisting of the Detention Facilities Unit, Defence Counsel Unit, Court Management and Support Services Unit and the Victims and Witnesses Unit. As annexures to this Chapter, the historic and important Trial Chamber decision on deferral, and the Appeals Chamber's decision on the Tadić Jurisdictional Motion comprise Annex A, while six of the indictments confirmed in 1995 are set out in Annex B.

The valuable second Annual Report of the Tribunal, a letter from the President of the Tribunal to the President of the Security Council, and an address of the President of the Tribunal to the General Assembly of the United Nations form the content of Chapter IV. The important subject matter of State Cooperation is dealt with in Chapter V, which discusses States that had enacted implementing legislation in compliance with Article 9, paragraph 2; Article 10, paragraph 2; Article 18, Article 20, paragraph 2; Article 24, paragraph 3, Article 27; Article 29; and Article 30, paragraph 2 of the Statute of the Tribunal as at the end of 1995. A discussion indicating the States that have declared their willingness to accept persons convicted by the Tribunal in their prisons is included, and the Dayton Peace Agreement as it affects the Tribunal is also discussed. Unofficial texts of national implementing legislation of the states that enacted such legislation during 1995 are annexed to Chapter V. Chapter VI of the Yearbook contains the biographies of

the Judges, the Prosecutor and the Registrar, while Chapter VII sets out a working bibliography of recent publications to assist with further reading and research.

The Tribunal is marching on steadily with fortitude and hope. After scaling initial hurdles erected by general cynicism about its success and institutional difficulties, it is now in a position to attain its declared objective. Most sincere thanks are due to all who have stood by the Tribunal throughout its most difficult period, which is by no means completely over.

**H.E. A.G. Karibi-Whyte,**  
Vice-President

## ABBREVIATIONS

<b>ECMM</b>	European Commission Monitoring Mission
<b>ICTY</b>	International Criminal Tribunal for the Former Yugoslavia
<b>INTERPOL</b>	International Criminal Police Organisation
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## CHAPTER I

### THE TRIBUNAL'S JURISDICTION

The Tribunal's Statute, which was approved by the Security Council in Resolution 827 (1993), is the source of the Tribunal's jurisdiction. The Statute sets forth the subject-matter, personal, territorial and temporal jurisdiction of the Tribunal and also addresses the issue of concurrent jurisdiction.

The Tribunal has subject-matter jurisdiction (*ratione materiae*) over four clusters of offences: grave breaches of the Geneva Conventions of 1949, violations of the laws or customs of war, genocide and crimes against humanity. Articles 2 to 5 of the Statute set out the contours of the Tribunal's jurisdiction over these offences. The text of these Articles is reproduced below.

#### Article 2 Grave breaches of the Geneva Conventions of 1949

The International Tribunal shall have the power to prosecute persons committing or ordering to be committed grave breaches of the Geneva Conventions of 12 August 1949, namely the following acts against persons or property protected under the provisions of the relevant Geneva Conventions:

- (a) wilful killing;
- (b) torture or inhuman treatment, including biological experiments;
- (c) wilfully causing great suffering or serious injury to body or health;
- (d) extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
- (e) compelling a prisoner of war or a civilian to serve in the forces of a hostile power;
- (f) wilfully depriving a prisoner of war or a civilian of the rights of fair and regular trial;
- (g) unlawful deportation or transfer or unlawful confinement of a civilian;
- (h) taking civilians as hostages.

#### Article 3 Violations of the laws or customs of war

The International Tribunal shall have the power to prosecute persons violating the laws or customs of war. Such violations shall include, but not be limited to:

- (a) employment of poisonous weapons or other weapons calculated to cause unnecessary suffering;
- (b) wanton destruction of cities, towns or villages, or devastation not justified by military necessity;
- (c) attack, or bombardment, by whatever means, of undefended towns, villages, dwellings, or buildings;
- (d) seizure of, destruction or wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science;
- (e) plunder of public or private property.

#### Article 4 Genocide

1. The International Tribunal shall have the power to prosecute persons committing genocide as defined in paragraph 2 of this article or of committing any of the other acts

enumerated in paragraph 3 of this article.

2. Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) killing members of the group;
- (b) causing serious bodily or mental harm to members of the group;
- (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) imposing measures intended to prevent births within the group;
- (e) forcibly transferring children of the group to another group.

3. The following acts shall be punishable:

- (a) genocide;
- (b) conspiracy to commit genocide;
- (c) direct and public incitement to commit genocide;
- (d) attempt to commit genocide;
- (e) complicity in genocide.

#### **Article 5** **Crimes against humanity**

The International Tribunal shall have the power to prosecute persons responsible for the following crimes when committed in armed conflict, whether international or internal in character, and directed against any civilian population:

- (a) murder;
- (b) extermination;
- (c) enslavement;
- (d) deportation;
- (e) imprisonment;
- (f) torture;
- (g) rape;
- (h) persecutions on political, racial and religious grounds;
- (i) other inhumane acts.

Under Article 6 of the Statute, the Tribunal has personal jurisdiction (*ratione personae*) over natural persons. The Statute does not, however, give the Tribunal personal jurisdiction over entities, such as States, organisations and associations. Article 7 of the Statute lists the natural persons upon whom individual criminal responsibility can be imposed. It provides that a person who planned, instigated, ordered, committed or aided and abetted in the planning, preparation or execution of a crime referred to in Articles 2 to 5 of the Statute, is individually responsible for the crime. The official position of an accused person, including his position as a Head of State or Government official, does not relieve such a person of criminal responsibility and cannot mitigate his punishment. Superiors may be held criminally responsible for criminal acts committed by a subordinate if the superior knew or had reason to know that the subordinate was about to commit such acts or had done so and failed to take necessary and reasonable measures to prevent such acts or punish the perpetrators. The fact that an accused acted pursuant to a Government order or the order of a superior does not relieve him of criminal responsibility; it may, however, be a factor to be considered in mitigating the accused's punishment, if the Tribunal "determines that justice so requires."

Article 8 of the Statute provides that the Tribunal's territorial jurisdiction (*ratione loci*) extends to the territory of the former Socialist Federal Republic of Yugoslavia, including



its land surface, airspace and territorial waters. Article 8 also provides that the temporal jurisdiction (*ratione temporis*) of the Tribunal begins on 1 January 1991. Pursuant to Security Council Resolution 827 (1993), the temporal jurisdiction of the Tribunal will end on a date to be determined by the Security Council.

The Tribunal's Statute also addresses the issue of concurrent jurisdiction. Article 9 provides that the Tribunal and national courts shall have concurrent jurisdiction to prosecute persons for serious violations of international humanitarian law. Article 9 goes on to state that the Tribunal has primacy over national courts and may request them to discontinue their proceedings in deference to the Tribunal's proceedings. The Report<sup>1</sup> of the Secretary-General regarding the establishment of the Tribunal states that "[t]he details of how the primacy will be asserted shall be set out in the rules of procedure and evidence of the International Tribunal." Accordingly, matters relating to the primacy of the Tribunal are addressed in Rules 8 to 13 of the RPE<sup>2</sup>, which authorise the Prosecutor to request States to forward to him information regarding investigations or criminal proceedings in national courts if the Prosecutor believes that such investigations or proceedings relate to a crime within the jurisdiction of the Tribunal. The Prosecutor may also propose to a Trial Chamber that it make a formal deferral request to a State. The Trial Chamber may issue such a request if deemed appropriate. If, within sixty days after a State has been given notice of a request for deferral, the State fails to file a response which satisfies the Trial Chamber that the State has taken or is taking adequate measures to comply with the order, the Trial Chamber may request the President of the Tribunal to report the matter to the Security Council.

It should be noted that the Tribunal's Statute and the RPE do not provide for trials *in absentia*<sup>3</sup>. The absence of a provision authorising trials *in absentia* is in keeping with Article 21(4)(d) of the Tribunal's Statute; the latter is itself based on Article 14 of the International Covenant on Civil and Political Rights, which provides that defendants have the right to be tried in their presence and to defend themselves in person or through counsel of their own choice. It should be noted that Rule 61 of the RPE does provide a procedure for cases where the Prosecutor has been unable to execute a warrant of arrest. In such a case, at the invitation of the Judge who confirmed the indictment against the accused person, the Prosecutor is required to report on the measures that he has taken to effect personal service on the accused. If the Judge is satisfied that the measures taken are reasonable, he shall order that the indictment be submitted to his Trial Chamber. The Trial Chamber shall, at a public hearing, determine whether there are reasonable grounds for believing that the accused has committed the crimes charged in the indictment. If the Trial Chamber so determines, it shall issue an international arrest warrant in respect of the accused to all States. If a State's failure to effect personal service on an accused is due to that State's unwillingness to cooperate with the Tribunal, the Trial Chamber can so certify; whereupon the President of the Tribunal shall notify the Security Council.

The principle of *non-bis-in-idem*, which is included in Article 10 of the Tribunal's Statute, is also relevant to the issue of concurrent jurisdiction. Article 10 provides that a person may not be tried by a national court for acts constituting serious violations of international humanitarian law under the Tribunal's Statute if he or she has already been

<sup>1</sup> UN Doc. S/25704, para. 65.

<sup>2</sup> The RPE were first adopted on 11 February 1994 and were subsequently amended on a number of occasions. The most recent amendment was in June 1996.

<sup>3</sup> It should be noted, however, that Rule 80(B) of the RPE permits a Trial Chamber to order the removal of disruptive accused and to continue proceedings in his or her absence.