REPORTING JUSTICE

A HANDBOOK ON COVERING WAR CRIMES COURTS

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This book is dedicated to the dozens of frontline journalists who have lost their lives in recent conflicts while reporting on the human consequences of war.

The Institute for War & Peace Reporting builds peace and democracy through free and fair media. Programmes include reporting, training and institutional capacity building projects for local media in areas of crisis and conflict.

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INTRODUCTION

This handbook is intended for journalists undertaking one of the most challenging, important and potentially rewarding of tasks: reporting on the trials of war crimes suspects or investigating war crimes on the ground.

War crimes reporting, like any journalistic specialisation, makes its own demands and has its own rules. The historical background, procedures and law must be understood.

There are many reasons you may want to report on justice: you may have witnessed crimes being committed; you may feel your country or community has suffered war crimes; you may believe that your country or community has been engaged in war crimes and can only build a decent future by revealing and addressing past wrongs.

Whatever drives you to report on justice, you need to have the tools to do it. That is what this handbook sets out to provide.

Reporting Justice: A Handbook for Journalists introduces you to the various kinds of courts in which war crimes are tried; gives an outline of the history of the courts; explains the body of international law under which the courts operate; details how war crimes trials work; and explores the actual process of reporting both in the courts and on the ground.

The handbook is designed either to support formal training sessions with humanitarian law experts and experienced journalist trainers or to be used on its own for independent study and review.

The boxes in each chapter are intended to make the sometimes complex information easier to digest. Extended appendices provide basic humanitarian law documents and suggested online resources for further study and research.

The purpose of this book is to support countries emerging from war by improving public understanding of international and other justice processes. Strengthening the skills of individual reporters and editors will increase responsible and reliable reporting on justice issues and make a major contribution to the process.

The book's success, therefore, lies with you as a journalist, and the important work you will do in your own country in the months and years ahead.

Anthony Borden
Executive Director

Residents of Fataki a village in Eastern Congo flee south from Lendu militias.
Credit: Marcus Bleasdale

CHAPTER 1 – THE FIGHT AGAINST IMPUNITY

What Is a War Crime?

The term "war crime" is often used to describe an atrocity committed during a war, but the legal definition is more specific: a war crime is a serious violation of international humanitarian law, the body of law that defines what is and is not permitted during an armed conflict.

There is no single document, or even a universally agreed definition, of international humanitarian law. Instead, it is a mixture of multilateral treaties, United Nations Security Council resolutions, behavioural norms of states (customary law), and precedents set by various international courts.

These laws do not regulate whether a state may use force. Instead, they apply to individuals once an armed conflict is under way. Their aim is to limit civilian casualties and to minimise suffering.

War crimes courts are set up to enforce these laws. These courts have five basic aims, to:

- Try those accused of committing grave crimes, and punish those found to be responsible
- Bring justice to the victims of those crimes
- Deter future crimes
- Establish the facts to pave the way for reconciliation
- Strengthen the rule of law

The Role of the Reporter

War crimes courts can only achieve these goals if people are made aware of what they are doing. It is your job as a journalist to inform the public responsibly and reliably. That means undertaking your work without catering to prejudices held by either the winners or losers of conflicts. Victims may tend to assume that all suspects are guilty; the accused may assert that the court itself is invalid or incompetent.

It is your job to see through these competing biases and provide a fair and balanced presentation of the facts emerging from the trials. As a journalist, you must also keep a careful eye on the workings of the courts and draw attention to their shortcomings, as well as acknowledge their accomplishments. Press criticism may force the courts to operate more openly, fairly and effectively, yet relentless critiques can build up unjustified cynicism and suspicion of a court among the population at large.

One of the difficulties for journalists covering international tribunals and other justice mechanisms is that the institutions, the field and the law itself are still emerging, and they are developing quickly. This makes the subject dynamic and very exciting. Decisions now can have a significant impact not only on the perpetrators and victims involved in a case, and on the country as a whole, but also on the broader field of international humanitarian law and the global effort to bring war criminals to justice.

The fact that the field is so new can also create confusion. The various courts currently operating have each been set up differently, because they represent a response to different circumstances. The law has a longer history, dating back to conventions from the 1940s and long before that. But its practice is as new as the courts where it is now being tested. Expertise is limited, if growing, and resources – such as this handbook – are only evolving now.

In short, international humanitarian law and the institutions to uphold it have achieved a critical mass – but only very recently. Facing considerable pressures on all sides, a journalist must present a reliable and fair picture of complex and sometimes seemingly inscrutable proceedings. It is a major challenge.

To appreciate how new and dynamic the field is, it is essential to comprehend the long struggle to build the law and the courts needed to confront the perpetrators of the worst of humanity's crimes.

The Origins of Human Rights

Human rights have evolved as a concept over many years in many cultures. In the 18th and 19th centuries, several European philosophers proposed the concept of "natural rights" – that is rights that belong to a people by nature because they are human beings, not by virtue of citizenship of a particular country or membership of a particular religious or ethnic group.

The Crimes Tried at Nuremberg

Crimes against peace (aggression)
Planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances; participation in a common plan or conspiracy for the accomplishment of any of the following:

War crimes
Violations of the laws or customs of war which include, but are not limited to, murder, ill-treatment or deportation of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war, of persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns, or villages, or devastation not justified by military necessity.

Crimes against humanity
Murder, extermination, enslavement, deportation and other inhuman acts done against any civilian population, or persecutions on political, racial or religious grounds, when such acts are done or such persecutions are carried out in execution of, or in connection with any crime against peace or any war crime.

The term "crimes against humanity" was first used by an African American scholar called George Washington Williams, in an open letter to King Leopold II of Belgium in 1890, in which he spoke about the appalling human rights situation he had witnessed in the Congo, at the time run virtually as a private colony by the king.

Genocide
First relating to the Holocaust, it was not listed as a crime in the Nuremberg court's charter. But after pressure from Raphael Lemkin, the scholar who had actually coined the term "genocide", prosecutors included it in indictments against some of the major Nazis on trial, and in their closing remarks.

Credit: Tony Borden

Baghdad, February 2003

At the same time, the founder of the Red Cross, Henri Dunant, began expressing concern for the plight of the sick and wounded in war time and worked to establish the first Geneva Convention, which was signed in 1864. In the late nineteenth century and into the twentieth, these rights progressed further as political and religious groups worked to end slavery, serfdom and exploitative labour practices.

These values – what we now call human rights – were enshrined in the Charter of the United Nations just after World War II. In its preamble, the charter stated that the UN aimed to "reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small". It entered into force in October 1945. The Universal Declaration of Human Rights (December 10 1948) elaborated on these provisions and produced a full catalogue of human rights.

Nuremberg

The international human rights movement grew quickly in the second half of the 20th century. In 1946, the Nazi military and political leadership were put on trial in Nuremberg for the crimes they committed against civilians and a new legal concept was born: crimes against humanity.

The Nuremberg trials were a watershed in international humanitarian law. They marked the first time leaders of a major state were tried by the international community for war crimes, crimes against peace and crimes against humanity.

By putting on trial those responsible for the Holocaust – the annihilation of six million European Jews – the Allies showed the world what had been done and thus made it impossible to deny what had happened. In addition to punishing those responsible for the crimes, the Nuremberg trials also served to bring justice to those who survived the Holocaust by acknowledging their suffering. Finally the trial strengthened the rule of law internationally, establishing the principle that there was such a thing as crimes against humanity.

Much of this would have been impossible without the media. Had journalists not covered the trial, the public would not have known about what unfolded in the Nuremberg courtroom. Without them, the shocking footage of Nazi death camps, the dramatic testimony of camp survivors, and the hundreds of thousands of documents detailing Nazi crimes would never have made it into the public's consciousness and a crucial part of the tribunal's mission would have been left unfulfilled.

Parallel trials were also held in Tokyo, to try Japanese leaders for their part in wartime atrocities.

Emboldened by these trials, human rights activists were determined to end impunity – that is, where people get away with major crimes unpunished. They devised the 1948 Genocide Convention, which gave legal meaning to the worst crimes known to mankind, and drafted the 1949 Geneva conventions, which codified the laws of war and outlawed attacks on civilians and civilian property. In their eyes, the next logical step was an international court to enforce the newly developed body of international humanitarian law.

The Cold War and After

But it was not to be. In the years following World War II, the United States and the Soviet Union began competing with one another in an effort to spread their opposing ideologies throughout the world. As they built up their military arsenals, the two superpowers hamstrung the United Nations Security Council with their veto powers, rendering any kind of international cooperation towards creating an international court impossible.

Nuremberg

By far the most famous war crimes trials of the modern era were the Nuremberg trials, the trials of Nazis involved in World War II and the Holocaust.

Initiated by the United States, Great Britain, France and the Soviet Union – the victors in the war – the trials were held at the Nuremberg Palace of Justice in Germany from 1945 until 1949.

The first and most famous trial began in November 1945 at the International Military Tribunal. Twenty-four of the main captured Nazi leaders were put on trial, and 12 of them were sentenced to death. Subsequently, scores of lower-ranking war crimes suspects were tried at the US Nuremberg Military Tribunal. In the process, the inner-workings of the Nazi war machine were exposed.

When the four powers signed an agreement creating the International Military Tribunal in August 1945, they had to decide which type of legal system the court would use: **common law**, used by the British and the Americans, or **civil law** used in Europe and the Soviet Union. They settled on a hybrid of the two systems – an example that was to be followed by future tribunals.

The process at Nuremberg was flawed – it was victor's justice. Only crimes committed by the Germans were tried. There was no consideration of attacks by Allied forces on civilian populations in Germany or Japan. But Nuremberg would provide the critical groundwork for subsequent war crimes courts.

For nearly half a century, the body of law created in the wake of World War II seemed forgotten, so much so that by 1992 “civilised” Europe was again home to concentration camps, mass deportations and systematic destruction.

In what was then known as Yugoslavia, Serb forces began systematically expelling members of other communities from the territory they controlled. They did so in front of the world's eyes in utter disregard for the laws of war, confident that they would never have to answer for their crimes. This practice was also applied by other parties in conflicts throughout the region.

But by then the Cold War was over, the Soviet Union had collapsed, and the United Nations was no longer crippled. As the savagery continued unabated, a public outcry forced the world’s powers to act. In 1993, the United Nations Security Council established the International Criminal Tribunal for the Former Yugoslavia (ICTY), to hold accountable those responsible for committing the atrocities.

The ICTY, based in The Hague, Netherlands, was the first war crimes tribunal since Nuremberg, and its establishment spearheaded what human rights activists call the “shift from impunity to accountability.” The following year, the Security Council created a court for Rwanda to hold accountable those responsible for the slaughter of some 800,000 Tutsis and moderate Hutus in 1994. A Special Court for Sierra Leone followed, as did efforts to try war crimes suspects in Kosovo, Cambodia and East Timor, among others.

A Permanent Court

Finally, in July 2002, the International Criminal Court, the world’s first permanent international body capable of trying individuals accused of the most serious violations of international humanitarian law, came into being.

Created through a treaty among nations, currently with 100 signatories, it is an independent body, tasked with prosecuting alleged war criminals where states are themselves not willing or able to do so.

The court had long been the missing link in international human rights enforcement. The court faces many challenges – a vast remit, the complex nature of the cases it will deal with, and in particular strong opposition from the United States. But although most countries had long ago accepted the Universal Declaration of Human Rights and ratified the Geneva conventions, the Genocide Convention and other treaties, there had never been an official enforcement mechanism with jurisdiction over individuals who commit these crimes.

Now such a court exists.

EXERCISES

In this chapter, we’ve looked at the aims of war crimes courts and their history. Answer the following questions:

1) The Nuremberg Trials achieved three key things. What were they?
2) What were the crimes tried at Nuremberg?
3) Why was the role of journalists at Nuremberg so important?
4) Which was the first war crimes tribunal set up after Nuremberg?

CHAPTER 2 – THE TRIBUNALS

International humanitarian law has no single basis but draws on a complex web of documents, treaties, rulings and customary practice. So too there is no single institution to enforce this law. In response to different historical moments, many different types of courts have been created to try those accused of war crimes.

These include:

- International Criminal Court (ICC)
- Ad-hoc tribunals for Yugoslavia and Rwanda (ICTY and ICTR)
- Hybrid courts
- National courts

This chapter reviews the main courts currently operating, provides background on their formation, and explains some of the key differences in how they are structured, how they operate and what kind of crimes they cover.

International Criminal Court

The newest and most far-reaching tribunal created to hold war crimes suspects accountable is the International Criminal Court (ICC), based in The Hague.

The ICC has been a long time coming. A court of this kind had been envisaged ever since 1945, when the Allied forces who won World War II established the Nuremberg tribunal to try Nazi war criminals.

The aim of the ICC is to try individuals for the worst crimes known to mankind. It is the first permanent court created to investigate and try such cases. Until 2002, when it came into being, war-crimes trials had been conducted by domestic courts or by temporary tribunals with a specific focus.

The Rome Treaty, which created the ICC, was adopted by an overwhelming majority of United Nations member states in July 1998. But the court could only start operating when 60 countries had ratified the treaty, which took another four years.

The ICC is empowered to try war crimes, crimes against humanity and genocide. The ICC definition of crimes against humanity includes rape, torture, forced disappearance and apartheid. The ICC also has the power to try the crime of aggression – but only after the states which have signed up to the court can agree on a definition of this crime.

Contrary to popular belief, the ICC does not have the power to prosecute any person anywhere in the world. It can only try crimes relating to alleged violations of international humanitarian law that were committed after July 1, 2002 – that is, after the court was formally constituted. It only has jurisdiction over crimes committed within states that have ratified the Rome treaty, or that are attributed to nationals of those states.

The ICC is independent and is not a UN institution. However, the UN Security Council can refer a situation in any territory of the world to the ICC – overriding the national and territorial limitation on the court's jurisdiction. But such a step can only be taken under the Chapter VII of the UN Charter, which governs intervention. This would require the agreement of the majority of members of the Security Council, and the acceptance of all permanent members, which hold veto power.

The ICC plans to help victims by providing them with compensation through the Victims' Trust Fund, which is overseen by an independent board of directors. Support for the fund will come from governments, foundations and private donors. The court can also order criminals to pay reparations.

As of the start of 2006, 100 countries had ratified the treaty, and the ultimate aim is universal ratification. But opposition by the United States to the court has significantly hindered the process. The US fears that an anti-American ICC prosecutor could use the court as a tool to unfairly target Americans. So Washington has not only refused to ratify the Rome Statute, it has also used its political and economic leverage to undermine it by demanding that states sign bilateral agreements pledging not to subject American citizens to the court. Those who refuse could be denied US military or other aid.

A child waits with her mother in Disa, Northern Darfur. Credit: Marcus Bleasdale

Credit: IWPR

The late former Yugoslav president Slobodan Milosevic in the courtroom

An ICC case can be triggered by the court's independent prosecutor, by a country, or by the UN Security Council. The court will only proceed if it is convinced that the country concerned is unwilling or unable to look into and potentially bring to trial a war crimes case itself. "Failed" or "collapsed" states, or countries at war, may not have the ability to undertake complex war crimes trials; countries which have been involved in war crimes may simply refuse to.

As of February 2006, ICC Chief Prosecutor Luis Moreno-Ocampo had decided to open investigations into three situations in Africa, as a first step that could lead to war crimes trials:

- Democratic Republic of Congo
- Uganda
- Darfur, Sudan

Ad-hoc UN Tribunals: Rwanda and Former Yugoslavia

Before the ICC came into being, there were other attempts to bring war criminals to account.

In what was then known as Yugoslavia, a series of wars erupted in the 1990s in which various ethnic groups were systematically and brutally expelled from territories they controlled. Much fighting on the part of Serb, Croat and Bosnian Muslim forces was undertaken with utter disregard for the laws of war, by individuals who were confident that they would not have to answer for their crimes.

But a public outcry forced the world's powers to act and in 1993, the United Nations Security Council established the International Criminal Tribunal for the Former Yugoslavia. Based in The Hague, in the Netherlands, this was the first war crimes tribunal since Nuremberg.

The next year, 800,000 Tutsis and moderate Hutus were slaughtered in the genocide in Rwanda. In response, in November 1994, the Security Council voted to create the International Criminal Tribunal for Rwanda (ICTR).

Both tribunals were created by UN Security Council resolutions and are UN institutions. Both have a mandate to prosecute war crimes undertaken by anyone on the territory, from any ethnic or national group, or any country.

Like the ICC, the crimes under the jurisdiction of the ad-hoc UN tribunals include war crimes, crimes against humanity and genocide.

Both the ICTY and ICTR – like the Nuremberg court before them – employ a combination of civil law and common law. Prosecutors investigate and bring indictments, which have to be confirmed by the judges before they become official. Trials are conducted in an adversarial manner, with prosecutors and defence lawyers presenting their arguments to the judges, who act as referees. There is no jury. It is the panel of judges who hand down the final decision.

Cases are built in the courtroom, where hundreds of witnesses might be questioned. Sometimes witnesses can choose not to appear in person, but to submit a written statement instead. ICTY and ICTR prosecutors may offer plea agreements – in other words, they can offer to reduce the charges against an accused in exchange for a guilty plea and usually cooperation in providing testimony in another case. But the judges may disregard plea agreements. Suspects are entitled to appeal their cases through a specially-created joint Appeals Chamber that covers both the Rwandan and the former Yugoslav tribunals.

The ICTY, based in The Hague, the Netherlands, has indicted 161 people from all ethnic groups and all sides involved in the wars in the former Yugoslavia, including the late former president of Yugoslavia Slobodan Milosevic. By February 2006, more than 130 accused had appeared before the court. Forty had been found guilty and six acquitted, with others having died or had the indictments against them withdrawn. Six remained at large.

The ICTR, headquartered in Arusha, Tanzania, with the prosecutor's office in Kigali, Rwanda, has indicted 59 people, including senior cabinet

Credit: IWPR

ICTY building in The Hague

Common Law vs Civil Law

Following the pattern from Nuremberg, the international war crimes courts have largely adopted a hybrid system adapting from both common law and civil law. What are the differences between the two, and what does the combined approach mean?

The common law system – often thought of as "Anglo-Saxon" or English because it is used in Britain and former colonies, including the United States – is based on court decisions and the principles that emerge from them. This is known as precedent. (It also draws on custom and usage, and written law.)

Under common law, prosecutors need to establish that there is a prima facie case, meaning one that is likely to result in a conviction if brought to trial. Prosecutors and defence lawyers then present opposing legal arguments in the courtroom while the judge plays a passive role, presiding over proceedings and acting as referee between opposing counsel. A jury drawn from randomly selected members of the public renders a verdict.

Because jurors do not have legal expertise and could be prone to believing any convincing argument, the common law system has developed strict rules of evidence aimed at excluding less-than-trustworthy information. Evidence that does not meet this standard is not presented to the jury and is not considered part of the case. So long as evidence passes this test, however, the parties are free to introduce whatever they believe will best support their version of events. They can decide whom to call as witnesses, and are given a chance to question the other side's witnesses through the often hostile process of cross-examination.

Civil law proceedings are based on written codes of law, and precedent plays a lesser role. Trials are not adversarial but rather "inquisitorial". That means the judges take a leading role, conducting investigations and asking questions during the trial in an attempt to come as close to the truth as possible. The judges also give the decision or verdict; there are generally no juries (although some civil law countries such as Russia are introducing them). Although the rules of evidence are more lenient, all the evidence for the case must be presented before an indictment is issued. Documents play a greater role than witness testimony.

Many international war crimes tribunals, including Nuremberg, ICTY, ICTR and ICC, adopted a mixed common-civil law system. In the courtroom, this means that:

- some evidence is presented with the indictment, and some is introduced later during the trial;
- as in civil law, a panel of judges, not a jury, renders decisions;
- as in common law, an adversarial system is used;
- the defendants have a right to present evidence in their own defence and to cross-examine witnesses brought by the prosecution.

In practice this has also meant extensive behind-the-scenes discussions and debates among the judges, as legal minds from both traditions work together to clarify and agree their working procedures. The international war crimes tribunals are sometimes as much about creating a new legal system as they are about trying the specific cases at hand.

members, military commanders, politicians, journalists and senior businessman from the time of the genocide in 1994. By February 2006, it had dealt with 26 cases and secured several genocide convictions, making it the first court to rule on the crime as defined under the Genocide Convention of 1948. Another 28 suspects were on trial and nine remained at large.

These tribunals have been successful in holding accountable some of those responsible for the worst crimes in the former Yugoslavia and Rwanda. They have also contributed to the broader goal of establishing a record of crimes and helping those societies face up to what happened.

They have not been an unqualified success, however. Both tribunals take place hundreds of miles from the sites of the crimes, which make the proceedings feel remote to those who are supposed to benefit from them. Some key accused have not surrendered or been apprehended. The cases have also been very complex and expensive to run, and they are under pressure from the international community to complete their work and close down in the next few years.

Hybrid Courts: Sierra Leone

Sierra Leone's brutal war, which included mass killings, mutilations and sex crimes, ended in 2002, with an international commitment to support a court that would try and punish the worst perpetrators.

To avoid the expense of establishing a UN tribunal and to ensure that the justice meted out would resonate within the society, the UN and the government of Sierra Leone agreed to establish a so-called hybrid tribunal with both national and international staff, judges, prosecutors and defence lawyers. The Special Court for Sierra Leone, based in the capital, Freetown, has a three-year mandate and a total budget of $57 million. Trials began in June 2004.

The Special Court for Sierra Leone draws on parts of the 1949 Geneva conventions (see chapter 6) and other international legislation, as well as national law of Sierra Leone. It can try crimes against humanity including murder, extermination, enslavement, deportation, imprisonment, torture, rape and other forms of sexual violence, persecution and other inhumane acts when carried out as part of a "widespread or systematic attack against any civilian population".

Credit: Tony Borden

Mass grave near Baghdad, February 2003

Under the Geneva conventions' common Article 3 and the Additional Protocol II of 1997, the court can prosecute people for violence including murder and torture, collective punishment, humiliating and degrading treatment, pillage, and extra-judicial killings. Other international-law violations include deliberate attacks on civilians, aid workers and peacekeepers, and conscripting children under the age of 15 into armed forces. Finally, the court can charge people for breaches of Sierra Leonean law such as the abuse of girls under 14, and wanton destruction of property.

Genocide was not listed in the court's statute because it is not believed to have taken place in Sierra Leone.

The Sierra Leone court has a registry, chambers and prosecution. The defence is also included as an integral body of the court.

So far, 11 people from all sides in the country's former warring factions have been indicted, including the former president of Liberia, Charles Taylor.

Other Hybrid & National Courts

Several other courts have been established to address crimes in countries under transition. National or hybrid courts can help speed the process and ensure local resonance. Sometimes, however, they may become tied up in national political issues and get delayed or entrapped in controversy over their structure or questions about their professionalism, capacity or neutrality.

A similar hybrid court has been created in Cambodia, where trials of the surviving Khmer Rouge leaders, who seized power and were

responsible for the deaths of at least 1.7 million people during four years of terror from 1975 to 1979, are due to start in 2007.

In Kosovo, a region of Serbia and Montenegro on the territory of the former Yugoslavia administered by the United Nations, the UN mission has been helping to rebuild the province's judiciary and legal system, and as part of that effort has overseen numerous trials involving violations of international humanitarian law.

In East Timor, the United Nations Transitional Administration has established Special Panels within the local judicial system to hold war crimes suspects accountable.

In Bosnia and Herzegovina, a country that used to be part of Yugoslavia, a War Crimes Chamber has been set up in close cooperation with the ICTY, to try those responsible for events during the wars in the Balkans, including individuals that the tribunal in The Hague considers too low-level to deal with itself.

In neighbouring Croatia and Serbia, the judicial systems have also been given international support to overhaul their courts to meet European standards, so that they can run effective war crimes trials on their own.

In Iraq, former president Saddam Hussein and other top leaders are being tried at a Special Tribunal created by the Iraqi Governing Council and the US-led Coalition Provisional Authority. It is staffed by Iraqi judges and other Iraqi personnel, with the US military providing detention facilities and support. It is empowered to try Iraqi nationals or residents of Iraq during the time of the government of Saddam Hussein accused of war crimes, crimes against humanity, genocide, and violations of certain Iraqi laws relating to abuse of power or national resources.

Credit: IWPR

A grave digger at a cemetery in Harare

Existing national courts sometimes exert the authority to try war crimes cases. Some courts in Europe have sought to establish a right of universal jurisdiction, and have sought controversially to bring cases against political or military leaders from other countries.

EXERCISES

In this chapter, you reviewed the various kinds of courts and tribunals. See if you can answer the following questions, and then check your answers:

1. How were the tribunals for the former Yugoslavia and Rwanda created?
2. Why was the ICTR created?
3. Why are all UN member states obliged to cooperate with the ICTR?
4. How was the ICC created?
5. Why was it not possible to refer the genocide in Rwanda or the crimes during the Sierra Leone civil war to the ICC?
6. What kind of court does Sierra Leone have?
7. What are some of the advantages of having a hybrid court?

CHAPTER 3 – IN THE COURTROOM

Journalists are separate from the courts and must at all times retain their independence from court institutions and officials. But they have an essential role to play if war crimes courts are to achieve their broader goals.

Fairness and transparency are essential if the society at large is to understand and accept whatever judgements a court may hand down. In many cases, the rulings and the courts themselves will be very controversial – especially within the communities from which a war criminal is drawn. Hence it is important that the details of war crimes cases and the work of the courts are reported fairly and accurately.

Your job as a reporter covering the International Criminal Court or any other war crimes tribunal is in the first place to provide a responsible and balanced presentation of the proceedings, the facts and legal issues arising, and the rulings taken.

You will also have to monitor what happens outside the courtroom, because everything the court does can have an impact on the ground. This may mean reporting on the court itself, its strategies and plans (UN courts, for example, provide a regular report on their work to the Security Council), and its problems and challenges.

But the courtroom will be your starting point. It is through the day-to-day proceedings there that you will get to know the facts for your stories: the conflicts and the crimes, plus the many personalities involved, including the accused and the victims, lawyers for the prosecution and defence, other witnesses, officials and of course the judges.

What You Will See and Hear

Once you have your credentials (see box, page 18), you can attend trials and use other facilities made available to reporters at the court. Every court has rules about what you are allowed to take

Lord's Resistance Army fighters captured in an ambush are paraded in front of the town in Soroti, Central Uganda.
Credit: Marcus Bleasdale

OUTSIDE IMPACTS

A court's decisions can have lasting influence on on-going conflicts and on international humanitarian law.

When the ICC issued arrest warrants for the leaders of Uganda's Lord's Resistance Army in October 2005, mediators were still working to broker a peace between the rebels and the government. These mediators said the ICC investigation was jeopardising their work, by driving the LRA away from the talks.

ICC investigators kept a low profile, but in the end, the court issued arrest warrants and mediation efforts appear to be on hold. As the story has unfolded on the ground in Uganda, journalists have had the opportunity to address important issues concerning the ICC and how it operates – an important part of reporting on the court.

When the ICTY, the former Yugoslav court, was established in the mid-1990s, those indicted by the court were excluded by international mediators from peace negotiations over Bosnia. In this instance, setting up a court may have assisted peace talks by forcing the exclusion of obstructionist players who had stymied settlements for years.

In September 1998, judges at the ICTR found the former mayor of a Rwandan town, Jean-Paul Akayesu, guilty of genocide. The ruling was historic because he was the first person to be found guilty of genocide since the Convention on Genocide came into force in 1948. It was also significant for what it said about rape – that acts of sexual violence can form an integral part of the process of destroying a group, i.e., genocide.

In covering the court, you will be expected to report on the political impact of court decisions and to explain groundbreaking legal precedents as they emerge.

Getting Started at the ICC

The first thing you need to do to cover a court case is to get press credentials, which you can do through the press office. Generally there is a press representative for the registry, which basically manages the court, as well as the prosecutor's office. In this case, it is the registry press office that you need to contact.

In the case of the ICC, the court will issue long-term press credentials or daily passes for journalists covering the court in the short term. For long-term accreditation, journalists have to fill out the ICC's Accreditation Request Form, which can be downloaded form the court's website or requested via post.

Journalists are required to provide the following documentation:

- letter from the media outlet they are representing, specifying how long they will be covering the court;
- photocopy of a valid passport;
- photocopy of a valid press pass;
- passport photo.

The information should be sent to:
International Criminal Court / Public Information
Media Accreditation
P.O. Box 19519
2500 CM The Hague
The Netherlands

It can also sent by fax to +31 (0) 70 515 8408 or by e-mail to press@icc-cpi.int.

Daily passes can be obtained at the court by presenting a valid press pass and passport.

Although there is plenty of space in the courtroom galleries for journalists, some cases may attract so many that you need special accreditation. The press office will post applications for this on the ICC's website.

Once you have your credentials, you will be able to enter the courtroom and have access to the press centre. Journalists are not permitted access to any other office unless accompanied by a member of the Public Information Unit.

ICC Contacts:

ICC Website: www.icc-cpi.int
Registry spokesperson, Ernest Sagaga +31 (0) 70 515 8762
Prosecutor's spokesperson, Yves Sokorobi +31 (0) 70 515 8560

The Registry has also prepared a handbook for journalists, which may be requested by e-mailing press@icc-cpi.int or pio@icc-cpi.int

Contact for the Association of Journalists at the International Criminal Court

Thomas Verfuss, President
Prins Mauritsplein, 21
2582 ND The Hague, The Netherlands
Telephone + 31 (0) 65 338 1687
Fax: + 31 (0) 70 350 5151
Email: thomas.verfuss@planet.nl

into the courtroom. Usually, electronic equipment including tape recorders, mobile telephones and cameras are not allowed.

All proceedings at the ICC, for example, are recorded by the court and the press office can arrange for journalists to get video or audio feeds for broadcast. There are video outlets in the press working area, to record the proceedings. There may also be a press room where you can watch the proceedings via closed-circuit TV, enabling you to work comfortably while following activities in the courtroom.

Journalists who regularly cover the ICC have formed an organisation called the Association of Journalists at the International Criminal Court. It can be extremely helpful – whether you are having trouble getting the information you need from court officials or just seeking advice from other journalists.

At the ICC, you will sit behind a glass partition in the press section. In the centre of the courtroom

Damba and Bintu in a refugee camp.
Credit: Marcus Bleasdale


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How the Rwanda Tribunal Works

The Rwanda tribunal in Arusha is made up of three parts: the registry, the chambers and the prosecutor's office. The registry is in charge of all the administrative work. It controls security, organises trial schedules and the protection of witnesses and deals with the press. It also pays the defence lawyers.

Chambers refers to the judges, who control trial proceedings and pass judgements.

The Office of the Prosecutor (OTP), headed by the chief prosecutor, conducts investigations, builds cases and presents evidence in court. Various investigators such as police or forensic scientists might be involved in finding evidence against an individual. That could involve digging up graves at a crime scene or interviewing witnesses thousands of miles away.

If the tribunal has evidence against someone, that person can be arrested and transferred to Arusha. The OTP may be involved in investigating the whereabouts of individuals, but the court does not have its own police and relies on local law-enforcement authorities to arrest people. Because the tribunal has been set up with the backing of the UN Security Council, all UN member states are obliged to cooperate with it. Even so, there have been delays in getting individuals extradited.

In Arusha, individual defence lawyers register with the court. If defendants cannot pay for their own defence, the court will provide a small choice of lawyers and pay defence costs.

you will see a bench of three judges, who make up the trial chamber.

On one side of the courtroom is the prosecution team and on the other, the defence. The accused sits off to the side, behind the defence team. The witness being questioned will sit in the centre of the courtroom.

The working languages of the ICC are French and English, and there will be simultaneous interpretation (translation) in both these languages via headsets.

Both the prosecution and the defence will call witnesses and present documentary evidence. Each side can cross-examine the other's witnesses and question the evidence.

You may report on anything that is said in the courtroom, and generally you will be able to see a witness give testimony. However, when sensitive evidence is being given, measures might be taken to protect the witness's identity, such as hiding them from view or distorting their voice electronically. In some cases, the court may go into closed session and all spectators, journalists included, have to leave the courtroom.

Resources and Interviewing

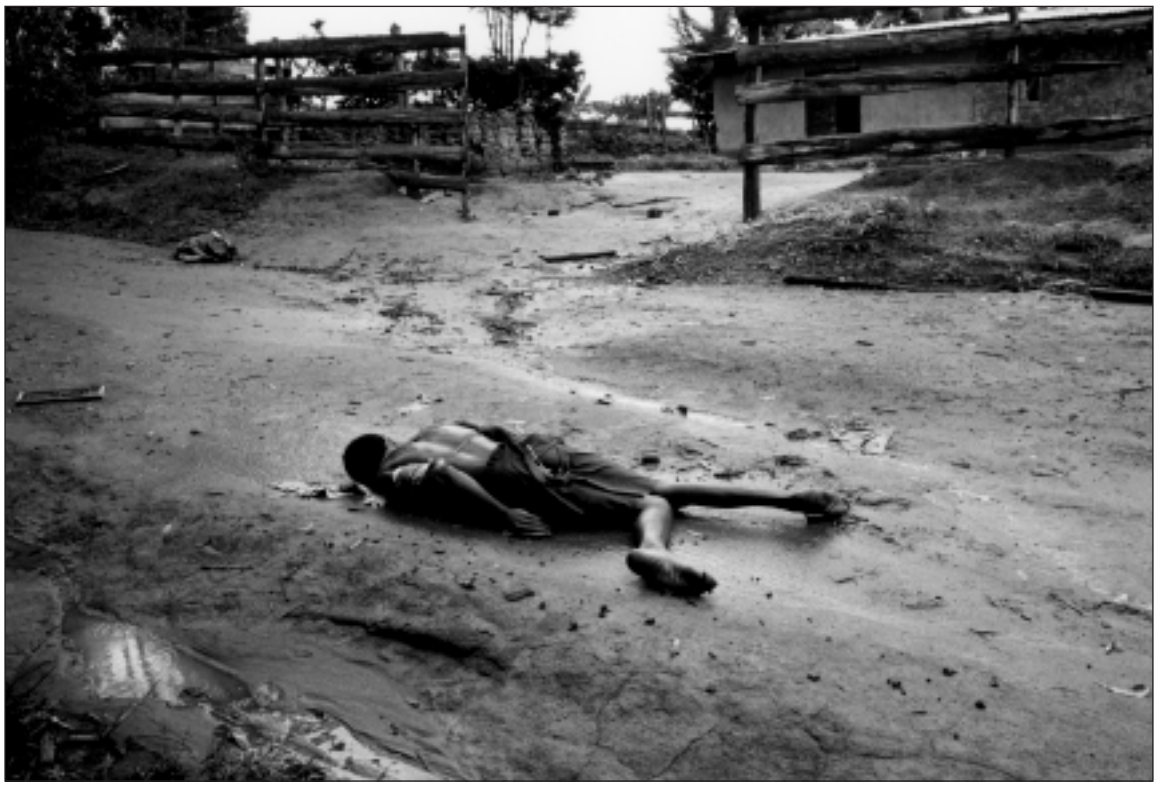
As a general rule, you may not interview witnesses before or after they give testimony. Courts cannot prevent journalists from tracking down witnesses, but both prosecutors and defence lawyers instruct witnesses not to speak to journalists. That's to prevent stories that conflict with their testimony from appearing in the press.

But you can examine documents and photographs presented in open court. Ask the press office for copies. This will include indictments, legal rulings and possibly also transcripts of the sessions.

You may also seek to interview the prosecution, the defence or the judges. Each body has its own press person. If, for example, you want to interview someone from the prosecution to explain the concept of command responsibility, you would call the prosecutor's press office. Note that if judges are willing to speak to the press, they will not comment on the specifics of a pending case, but may be willing to discuss the broader progress of a court, its results, challenges and objectives in future.

After a while, you will develop your own sources and will contact members of the prosecution, defence and judiciary directly. Press officers may not like being bypassed, but it's for your sources to decide whether they want to speak to you.

You should also develop a list of outside experts – representatives of independent monitoring, analysis or human rights organisations, other lawyers, judges or other legal experts – who can help you understand the cases as they progress and provide analysis and comment on developments. A list of international organisations working on justice issues is included in the appendix.



Credit: Marcus Bleasdale

Bodies of Hema men, executed by Lendu militia just hours before, lie on the road north out of Fataki in Eastern Congo. They were bound and impaled before being shot.

Whoever you are speaking with, make sure you have done your research beforehand. Nothing will annoy busy and important sources more than if you telephone them for basic information you should know already or could readily have obtained on your own.

For the ICC, the best place to start if you have access to the internet is its website, www.icc-cpi.int. This will contain the court's basic legal texts, indictments, the court's calendar, decisions, profiles of judges and other staff members, as well as transcripts and possibly live video streaming – available via an internet connection – of courtroom proceedings. If you can, you should also subscribe to the ICC's press and media mailing lists at www.icc-cpi.int/press/Media_Contact.html. You may download a form and send it to the press office at pio@icc-cpi.int.

Regular press conferences are held in the court's briefing room. There are also television screens so that journalists can watch court proceedings – although at the ICC the proceedings are transmitted with a 30 minute delay. The press centre is equipped with telephones and internet connection. A small number of computers are also available.

EXERCISES

1) How do you get access to the court's proceedings?
2) How might the court choose to protect a witness's identity?
3) Can you interview witnesses?

CHAPTER 4 – PROCEDURE

This chapter explains the sequence of events that take place during a trial and how you should report them. All courts are different, depending on which jurisdiction they come under, but the issues are similar. Indeed, the procedure is similar in many respects to the functioning of many national courts.

Indictment

An indictment is a detailed list of the crimes a suspect is alleged to have committed. It is based on significant research and investigation by the prosecutor. The prosecutor will continue to seek information up until trial but must demonstrate a high level of evidence against an individual and have an indictment reviewed by a judge before it can be released.

Once an indictment is issued, it becomes a public document and you can quote from it. Read it carefully: the information in the indictment forms the basis for your future reports. At this stage you can describe the accused as "a war crimes suspect" – never forget that the charges at this point are allegations only and an accused person is innocent until proven guilty.

Sealed Indictments

Sealed indictments are those where the names of the individuals and the charges against them have not been made public, so that the prosecution has a better chance of catching them. There have been sealed indictments against a number of people at the Yugoslav tribunal.

They were introduced by the former Chief Prosecutor of the ICTY / ICTR, Louise Arbour, at a time when authorities were not cooperating with the tribunals to hand over suspects. She wanted to improve the chances of tracking people down, and the move has proved quite effective.

Sealed indictments are an instance where the court has specifically decided to withhold information from the media, until a suspect has been detained.

The indictment contains useful background information and lists the charges against a person as a number of counts. Generally, an incident or series of incidents is described and the counts relating to that incident are listed. Some of the people at the Yugoslav tribunal have had dozens of counts against them. At the Rwanda tribunal, there are generally fewer charges listed, but nearly everyone has faced the most serious charge: genocide.

At the ICC, the charges are listed in a warrant of arrest, rather than an indictment. As of February 2006, only five people had been issued with arrest warrants by the ICC – the leaders of a rebel group in Uganda, the Lord's Resistance Army.

Initial Appearance

Months or even years before a trial gets underway, suspects will make an initial appearance before the court. This is to give them the opportunity to plead guilty or not guilty to the charges. They will already have been given time to choose a defence lawyer. At this point, the indictment is your main source of reporting material. It may also be a time for reactions to the arrest and the opening of the case; often much information is already publicly known about a suspect and articles may be written reviewing this background.

Opening

When the prosecution and defence have completed preparation of their cases, legal and procedural issues have been debated and resolved, and witnesses confirmed, a case will come to trial. This process can take many months or even years.

Children sleeping in the 'Ark' in Gulu, Northern Uganda. There is no large-scale aid work helping the children who sleep out in the streets; local NGO's give their services for free to help children find shelter for the evening. They flee the villages in the late afternoon to avoid abduction and death at the hands of Joseph Kony's Lord's Resistance Army. Up to 25,000 children sleep outside in Gulu town each evening.
Credit: Marcus Bleasdale

The prosecution opens the trial to explain the charges and outline the case, reviewing the accusations being brought and the evidence and witness to be presented, and highlighting the individual responsibility of the accused.

The defence replies, likely arguing that the individual was not personally responsible or denying that the events constituted a war crime. In many cases before war crimes courts, the defence has challenged the legitimacy of the court itself, or has sought to make accusations against others who they say were involved in the conflict and may have also, they allege, perpetrated crimes, even bigger crimes.

These arguments are sometimes called opening briefs or statements and they spell out what each side is setting out to prove. They can contain a lot of useful information. They will give a strong signal of the evidence the prosecution will present and the strategy the defence intends to follow.

There may have been meetings before the trial to sort out technical disputes. These can be more interesting than they sound: a suspect may be preparing to change a plea to guilty, for instance. There are often debates over the admissibility of evidence, or issues surrounding various witness who may or may not be available to appear and the impact of this on the case each side is trying to make.

The technical workings of the trial are guided by the statute and procedures of the tribunal. These are available from the court, but you may wish to ask representatives from the prosecution or defence, or outside experts, to help you understand them. And be aware that these rules can change. At the Rwanda and former Yugoslavia tribunals, the judges meet every six months to try to streamline the procedures. It is important to stay on top of any changes.

Witnesses and Cross-examination

The main way that lawyers from each side try to prove their case is by presenting evidence, either through witnesses or documents. Sometimes witnesses appear in person, or they may submit a written statement. Other evidence can come from documents, such as military orders. Some witnesses are termed "expert" witnesses and provide the court with insight into a specific issue or background to a conflict.

Witnesses may testify voluntarily, or they may be required to appear by the force of a subpoena – a legal document demanding their presence before the court. A subpoena can equally be served to require a government to deliver specific documents needed as evidence.

The prosecution begins the case by presenting its evidence and its witnesses, with the defence given the opportunity to challenge them. When the prosecution's case closes, the defence mounts its case, and the roles are reversed.

Each witness testifies by answering questions. In the case of a prosecution witness, the prosecution starts asking questions first. In the case of a defence witness, the defence will do so. The lawyers will have met their own witness to talk through the questions and make sure they know the answers. They will also have tried to anticipate the questions the other side will ask.

The process of each side questioning a witness is called examination and cross-examination. There can be a lot of robust cross-questioning and if there are several defendants, with several lawyers, they can keep a witness on the stand for hours, if not days. The purpose is to give the judges ample opportunity to decide whether a witness is reliable or not.

Hearing Witness Testimony

Sometimes what you hear in court can be very distressing. One observer at the Rwanda tribunal described the following scene:

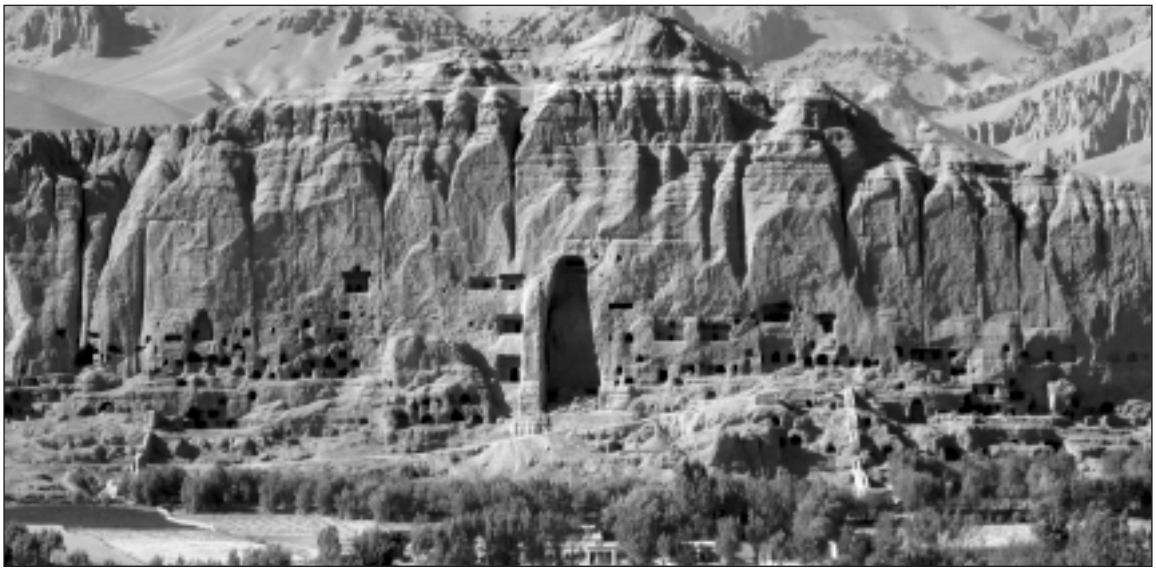
"One story which stuck with me, it was a defence lawyer, he was trying to question her [the witness] one time.

"'You said you had a baby on your back when you are trying to run away?' Then he asked her, 'What happened? Where had the baby gone?'

"She told us, 'I met somebody who was a Hutu who said he has got a car, he has milk, he's going to treat my baby like all his kids, and I left the baby...'

"Because she was tired, she had been running, she couldn't run any longer with the baby, it was very heavy. And then the baby was left with that man. When the defence lawyer asked her what happened to that baby in the end, she said, 'I understand he was given to the dogs.'

"I think there was something like three minutes of silence. Nobody could ask any more questions. And she was there, ready to answer other questions."



Credit: Jean MacKenzie

The Taleban's destruction of two giant Buddha statues at Bamian, Afghanistan, counts as an attack on cultural heritage.

This presentation of witnesses is the heart of the trial. You may have to cover a lot of evidence presented this way. It is very important to be able to convey accurately what has been said in court, to pick the most important quotes, and to put everything into context for your audience.

Remember, especially in a long trial, it is impossible to know what witnesses and what evidence the judges will find important when they make their decisions. So your challenge is to present as much information as clearly as you can, so that your audience can get the best impression of the complexity of the case as it proceeds.

When the presentation of evidence and testimony of witnesses by both sides is completed, the bulk of the trial is over.

Protected Witnesses

Witnesses are often worried about possible retaliation and do not want their identities known. The court can offer a range of measures to help protect them, including giving them a pseudonym, concealing their face, disguising their voice, or allowing them testify behind closed doors. Journalists have been charged with contempt (see below) for their part in revealing people's identity.

Closing Arguments

Once all the evidence has been presented and the prosecution and the defence have made their cases, the two sides will again tell the judges why the defendant is guilty or innocent of the charges. This is another important moment in the trial. Each lawyer will sum up the most telling points they have made and will try to demolish their opponent's case. Listening carefully at this stage will give you the best points of the case in a nutshell.

Judgement

The judges normally have a set period for delivering a judgement, so you know when to expect it. This is the most important part of the trial and you have to be prepared. The judgement has three main elements:

- whether the person is guilty or not guilty of all or any of the counts against him or her;
- what sentence the convicted person should serve;
- the judges' reasons for coming to their conclusion on the verdict and any sentence.

Appeal

At the international tribunals – and usually within a national legal system, too – once sentenced, the prisoner will have the right to appeal to a higher court. At the Rwanda tribunal, there is an Appeals Chamber (shared with the Yugoslav court) with five judges who are based in The Hague. They will hear any arguments and decide whether to confirm or change a verdict or a sentence.

What a Judgement Looks Like

Here is an excerpt from the judgement against Jean Paul Akayesu, the mayor of Taba in Rwanda, who was accused of war crimes, crimes against humanity and genocide. Ellipses indicate sections omitted.

ICTR-96-4-T Delivered on 2 September 1998

1. Trial Chamber 1 is sitting on this day, 2 September 1998, to deliver its judgment in the case "The Prosecutor versus Jean-Paul Akayesu", case no. ICTR-96-4-T.

[. . . .]

41. On the crime of **genocide**, the Chamber recalls that the definition given by Article 2 of the Statute is echoed exactly by the Convention for the Prevention and Repression of the Crime of Genocide. The Chamber notes that Rwanda acceded, by legislative decree, to the Convention on Genocide on 12 February 1975. Thus, punishment of the crime of genocide did exist in Rwanda in 1994, at the time of the acts alleged in the Indictment, and the perpetrator was liable to be brought before the competent courts of Rwanda to answer for this crime.

42. Contrary to popular belief, the crime of genocide does not imply the actual extermination of a group in its entirety, but is understood as such once any one of the acts mentioned in Article 2 of the Statute is committed with the specific intent to destroy "in whole or in part" a national, ethnical, racial or religious group. Genocide is distinct from other crimes inasmuch as it embodies a special intent or dolus specialis. Special intent of a crime is the specific intention, required as a constitutive element of the crime, which requires that the perpetrator clearly seek to produce the act charged. The special intent in the crime of genocide lies in "the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such".

43. Specifically, for any of the acts charged under Article 2(2) of the Statute to be a constitutive element of genocide, the act must have been committed against one or several individuals, because such individual or individuals were members of a specific group, and specifically because they belonged to this group. Thus, the victim is chosen not because of his individual identity, but rather on account of his being a member of a national, ethnical, racial or religious group. The victim of the act is therefore a member of a group, targeted as such; hence, the victim of the crime of genocide is the group itself and not the individual alone.

[. . . .]

55. In conclusion, regarding Count One on genocide, the Chamber is satisfied beyond reasonable doubt that these various acts were committed by Akayesu with the specific intent to destroy the Tutsi group, as such. Consequently, the Chamber is of the opinion that the acts alleged in paragraphs 12, 12A, 12B, 16, 18, 19, 20, 22 and 23 of the Indictment, constitute the crimes of killing members of the Tutsi group and causing serious bodily and mental harm to members of the Tutsi group. Furthermore, the Chamber is satisfied beyond reasonable doubt that in committing the various acts alleged, Akayesu had the specific intent of destroying the Tutsi group as such.

Contempt of Court

The UN war crimes tribunals and the ICC are empowered to prosecute people for contempt of court if they interfere with the work of the court or contravene orders from the judges. This could include intimidating a witness, revealing the identity of a protected witness, or refusing court orders to testify or produce documents.

The rationale for a court being able to prosecute someone for contempt is based on its need to uphold the integrity of the legal process. The rule of law depends on functioning courts, so they have the power to punish those who knowingly or wilfully defy their authority.

It is essential to know and understand the rules of contempt, because as a journalist you are vulnerable to breaking them. For example, you might learn the name of a witness whose identity was withheld during testimony. If you were to make it public, you could be held in contempt. Another possibility is if you covered the war and were the sole witness to a particular crime, in which case you could be called to provide testimony. If you refused to testify – and many journalists don't want to – you could be held in contempt.

A charge of contempt could result in heavy fines, imprisonment, or both. Different courts can hand down different punishments to those found guilty of contempt.

Maximum Penalties for Contempt of Court

Yugoslav tribunal, up to100,000 euro and up to 7 years in prison
(see www.un.org/icty/legaldoc-e/index.htm)

Rwanda tribunal, up to $10,000 or 6 months in prison
(see http://65.18.216.88/ENGLISH/rules/260600/6.htm)

Sierra Leone court, up to 2 million leones,7 years in prison, or both
(see www.un.org/icty/legaldoc-e/index.htm)

International Criminal Court, up to 100,000 euro fine, but no prison term

The ICTY has charged several journalists with contempt of court. The first time was in January 2002, after ICTY prosecutors asked *Washington Post* journalist Jonathan Randal to testify in the case against a Bosnian Serb politician, Radoslav Brdjanin. The defendant was accused of the persecution and expulsion of more than 100,000 non-Serbs during the 1992-95 Bosnian war.

Prosecutors cited a 1993 article Randal had written. It quoted Brdjanin as saying he wanted to drastically reduce the number of Muslims living in his province. He denied the quote, and the prosecution asked Randal to appear in order to verify it. Randal and his employer refused, claiming that testifying in court jeopardised a journalist's neutrality and that sources would not speak to the press if they thought that journalists might testify against them. The trial chamber then ordered that Randal either appear, or be held in contempt of court.

The Washington Post appealed, arguing that reporters should only be summoned when their evidence is essential to a case and cannot be obtained by any other means. The appeals chamber ruled in Randal's favour.

Two years later, however, the court indicted more journalists for contempt. The first was Dusko Jovanovic, editor-in-chief of the Montenegrin daily *Dan*. In August 2002, his newspaper revealed the identity of a protected witness who had testified against former Yugoslav president Slobodan Milosevic. The ICTY charged Jovanovic with contempt of court, but dropped the charge after he published an apology.

Later, the ICTY charged five Croatian journalists with contempt for revealing the identity of witnesses who had testified against a Croatian general. One of them, the chief editor of the *Hrvatski List* newspaper, Ivica Marijacic, was found guilty in March 2006 and ordered to pay a fined of 15,000 euro, as was the former head of the Croatian security service, Markica Rebic. The trials of the four other journalists have not yet concluded.

EXERCISES

In this chapter you've been looking at court procedures. Consider the following scenarios and discuss:

1. The court has issued an indictment against one of your country's high-ranking military officials. The indictment contains one more name, which is under seal, and blackened out. You manage to decipher the name from the electronic version of the document and discover that the second person indicted is the country's vice-president. Do you publish this information?
2. An important witness is testifying under protective measures against the former head of your country's secret service. A person you suspect of being a secret service employee approaches you with information about this witness's identity and asks you to publish it. What do you do?
3. A distant cousin of yours is indicted by the ICC for crimes against humanity and is on the run from the court. He contacts you through a middle-man and offers to give you an exclusive interview. He wants to convince people of his innocence. What do you do?

CHAPTER 5 – COURT REPORTING

So you have studied all the documents in the case, reviewed the background of international humanitarian law, sorted out your accreditation, and finally got yourself fully prepared and in the courtroom. But what do you write about?

The experience of attending a trial – whether of a local domestic dispute or a major war criminal – can be trying. Time moves slowly, procedural issues intrude, questions to witnesses seem repetitive or beside the point, and the judges are always going into recess.

Moments of high drama may seem few and far between, and even then come so cushioned in legal language and procedure that they can be hard to grasp. Many days there is a welter of disparate detail, like jigsaw puzzle pieces which you can't assemble. Your physical distance from the players in the courtroom, including separation by bulletproof glass, can make it all seem distant, even though you are right there.

Grappling with these challenges is no mean feat. But a clear idea of the kinds of articles you may write, what you are looking for, and how you will construct your story will make the job great deal easier.

Balance and Fairness

The most important rule to remember is balance and fairness. Preparing and writing a report on the proceedings in a war crimes court requires a reporter to adhere to the same basic standards of responsible and reliable reporting as other good journalism.

But in a war crimes court, a journalist must take special care to observe these principles carefully. This is both because of the specific legalities of working inside a courtroom and because of the inevitable risk of bringing one's views and prejudices to bear on such extremely emotive subjects. On a given day, you may inevitably be reporting on one side of the story – for example testimony from a prosecution or defence witness – but as well as ensuring that your report on this does not display bias, you should stand back and ensure that your coverage over a period of days and weeks is balanced as well.

For an in-depth review of the basic standards of responsible journalism, see IWPR's manual Reporting for Change: *A Handbook for Local Journalists in Crisis Areas*, which can be accessed online at www.iwpr.net.

Types of Stories

Knowing what kind of story you need to come up with at the end of the day will help you both in preparing in advance and in particular in undertaking your reporting within the courtroom.

Types of stories you may undertake include:

- courtside reports – a basic report on the day's proceedings, your bread and butter;
- news item – a short report, especially if you are working for a news agency, providing immediate notice of an important development;
- analysis – a more reflective article, drawing on expert advice and comment to explore the implications of a verdict, ruling, new piece of evidence or other key development in the trial;
- colour piece – generally written on an occasional basis, to give a sense of the flavour or tone of the courtroom and the personality and mood of the individuals involved;
- feature – a portrait of an individual, a study of the court itself, the law or facilities, or an in-depth look at some other aspect in and around the court;
- assessment – a well researched look at the progress of a case, or the court itself, reviewing results and gathering a substantial amount of expert view and comment to provide a clear but balanced view.

You must find out what the court you are dealing with allows in terms of reporting. Different systems apply different rules which dictate what reporters can and cannot do. For example, domestic courts in Britain are very strict and only allow straight reporting of proceedings. Analysis is only allowed once the trial has finished. The Hague tribunal for the former Yugoslavia is much less rigid, and this allows more analysis and

Credit: Marcus Bleasdale

Child soldiers wait in Bule, south of Fataki in Eastern Congo for orders to move.

background material to be introduced into an article. It is essential you find out what the reporting restrictions are, so as to avoid being charged with contempt of court.

Preparing for your time in court is essential, and will be driven in part by what you are trying to write. Having as much background in mind as you can is always advisable, but a short news item will largely be evident from events and you will draw from information provided openly in court. An analysis piece will definitely require that you are well-acquainted with all the documentation and background and have developed a useful array of sources within and outside the court to produce a balanced and informative view.

Other longer-form pieces will require even more research and preparation. Crucial here is to plan your reporting well, and anticipate the documentation and especially the sources you will need, taking special care to ensure that you speak to a balanced selection of individuals (for example, with sympathies for both defence and prosecution).

Tip: Knowledge of short-hand writing is an enormous benefit to any journalist covering a trial. Even a partial capability which can be picked up with a few hours practice enables you to write quicker and more legibly and to pay better attention at the same time. There are several books, courses and online resources to help. The Teeline method is considered the standard.

Courtside Reports

An article or broadcast based on a day or several days spent observing court proceedings is the most basic of court reports, but no less of a challenge.

The most important objective is to present a fair and unbiased account of events as they unfold in the courtroom.

Confronted with masses of detailed and confusing information, however, a long series of witnesses, and a complex body of law, the reporter is faced with what appear to be competing aims, namely to:

1. identify a main story within the portion of the trial one is reporting – the experience of a victim, the argument of a witness, the denial of a defendant – and tell it as a straight narrative (see example 1 in appendix 1); and
2. ensure that courtroom events are reflected fully and fairly – in other words, not to omit an important statement just because it doesn't fit neatly into one's chosen story.

Focus is essential if you are to present a meaningful and readable report. But selectivity can lead to accusations that you are concentrating on one side of the story, for example, only presenting evidence showing a defendant in the poorest light.

If that sounds like a contradiction, in some ways it is. But there are ways of dealing with it.

Remember by definition that you are reporting in the middle of a trial and cannot know the importance of what you are seeing until the case is finished and a verdict is handed down.

So you might start one story with a lead paragraph identifying the main theme you are going to draw out. But in a second or third paragraph, you could sum up the secondary point or issue that arose.

Subsequent paragraphs set out the main theme you have chosen to develop – the "story": what a witness said, how exchanges on that point went, etc. Towards the end, you can then return if necessary and add detail on the other important issues (summed up in your second or third paragraph) that you need to include for the sake of completeness.

Notice that in example 2 in the appendix, the reporter started by summarising the main points that would be expanded on later, and waited till paragraph five to sum up the other important facts.

Make sure you stay in court long enough to give a full account of the part you have been assigned to cover. If a defence witness speaks in the morning, make sure you are there when cross-examination by the prosecution takes place. If both take place within the time you have to cover the story, make sure you find out about it so you can attend and cover that side, when interesting facts and discrepancies may emerge.

It could also be that the witness speaks for the defence one week and you have to file a story; then you could mention in your piece that "prosecutors will cross-examine the witness next week" – and ensure that this process is also covered when it happens. The closing line "The trial continues" is sometimes used to remind readers that you are only presenting a snapshot.

Remember to stick to the facts at all times. Avoid adding too much extra context and history, and certainly don't inject editorial comment. Often it is best to restrict contextual information about a defendant to a simple summary of the charges listed on the indictment, rather than adding in information you got from elsewhere about the nature of the war, who did what to whom and so on.

You can legitimately describe the atmosphere in the courtroom, and it is good to use your eyes as well as your ears. Readers are not in the court with you and want to know what it is like. But avoid heavily slanted adjectives – no "shifty-looking" defendants or "arrogant" prosecutors. Tell your story through action rather than description. Reprimands by judges and sharp exchanges between teams of advocates can also especially be noteworthy.

Variants on the courtside theme include the factual report on some matter of procedure. Such a development could have an important impact on the trial and so may be necessary to report. See example 3 in the appendix.

From being around the courthouse, you will sometimes hear rumours – for example, about who is suspected and how close they are to being arrested. Make sure you have the information absolutely right, and beware of tipping someone off and helping them escape.

Analysis and Features

More reflective analytical pieces put developments in context and help your readers understand how a case is going. It is important to produce such pieces from time to time so that they can grasp the progress of a case amid the cascade of detail and counter-charges which make up most of the day-to-day progress of a trial.

This kind of report may take a court event – a verdict, ruling or new piece of evidence – and seek comment from experts, lawyers, victims, NGOs or others. (See Appendix 1, Example 4.) It may also be used to mark a key turning points, such as the start of a trial, the close of the prosecution case, the close of the defence case and of course the verdict.

Sometimes this would complement the courtside report, sometimes such an “on the ground reaction” would be the piece you file instead. This could be the case, for example, if the actual new evidence on the day amounted to just a paragraph or two of material but its importance merited further investigation or comment.

You might also interview prosecutors or defence lawyers – if the rules allow you to – to talk about a case. As with all interviews with officials, make sure you and they are clear about what is and what is not “on the record” – confirm in advance and very precisely your ground rules for how you may use their name (or not) or their comments. (In the close confines of court reporting, misusing your sources is a very bad idea as you will quickly find you have no one to talk to.) Do have your questions prepared, but if they lead you into other interesting angles, definitely allow them to elaborate.

The experienced journalist may also produce a broader analysis looking at court or trial issues that do not relate to a particular courtroom event but instead examine matters of law or principle emerging through the case. (See Example 6 in Appendix 1.)

In all cases, make sure you do not break court rules about what you can report on, especially those relating to contempt of court.

Preparing for a Big Day

On most days, the journalist will have to make an effort to draw out the importance of the courtroom exchanges. Some days, however, are clearly filled with drama, and you can be sure in advance that you will need to file a substantial piece.

The opening of a big trial, the taking the stand of a former state president, a major verdict in a genocide case – all of these will require you both to report the news and to provide “instant analysis” of the implications and context of the day.

Good preparation makes all the difference. While you may not be able to predict what will happen, you can anticipate likely outcomes. You can review and assess documents beforehand, and even write up some of your report before the day – for example paragraphs covering the main charges in a case which you will know before the opening day.

You should certainly plot the sources you would like to quote – taking care to maintain balance – and interview them beforehand if at all possible. This will provide you with useful context, and you can warn them that you may need to check back with them quickly on the day to get a final quote for your article.

All of this will enable you to slot in the new material as you get it – statements, evidence, as well as colour from the day – and crucially to review any already-prepared material to make sure it accords with events as they happened.

As long as you are organised and responsible, this approach can allow you to produce polished articles in real time that can match the scale of the events that you may witness.

One note of warning: never file a report based on pre-prepared material without attending the event and checking it against what actually happens. Careening into fiction and lies in your reporting is a fast-track way to lose credibly and seriously damage if not end your career.

EXERCISES

The only way to get used to court reporting is to do it in practice. Investigate what is happening in your local courts, and pick a trial or proceedings to try to cover.

Write a list of all the questions you need to answer: who's on trial, what law he or she is alleged to have broken, what stage the trial is at now, what has happened so far, what will happen next, when it will end, what the possible outcomes are. Identify all the main players. Get to know the court officials and see who will help provide documents or information.

When you feel you have enough information as background, try to write a report based on a day or two in court. Check back to make sure you've got all the details right, and see whether you've made a story of it, with a top line and a middle. If you can see you have gaps, work out why, and how you can fix them to make a better job of it next time.

CHAPTER 6 – CONFLICT REPORTING

Reporting on war crimes courts requires specialist knowledge and experience, but the fundamental requirement is to take particular care to abide by international standards because of the complicated and risky nature of the subject.

By the time you come to report on a war crimes court, you may have already gained experience reporting directly from the conflict out of which the alleged crimes emerged. But you may find yourself returning to the area to follow up on stories, to interview protagonists or victims, or to pursue other leads.

This chapter provides an overview of the basics of professional journalism. At IWPR we talk about "international standards" of journalism, because despite considerable variation in style and approach around the world, some general principles have nevertheless become commonly accepted as the basis for professional reporters and editors.

The chapter also reviews some special techniques and tips for reporting from conflict areas – how to interview victims and alleged perpetrators, how to reduce your risks of getting hurt, and how not to contribute to further conflict.

International Standards

Journalism codes around the world vary, but nearly all of them identify three fundamental factors as the basis for professional reporting: impartiality, accuracy and fairness. The key is for a journalist to establish, and maintain, his or her credibility.

Impartiality, or independence, means that reporters should not support one political party, religion, people or ethnic group over another. It allows for fairly reporting one side's policies or pronouncements, and for including comments that one party or group may make about another. In a courtroom environment, this means fairly representing evidence presented by each side, and adequately conveying their competing cases or arguments.

The core principle is that the reporter should not directly express his or her own comments, opinions or political preferences. Where commentary is appropriate, within an article or a separate comment or "op-ed" article, responsible journalism provides clear distinction between what is fact and what is opinion.

Accuracy is a fundamental principle of professional journalism. This means good observation, good listening, sound background reading and, above all, talking to the right people to find reliable information.

Journalists need to take extensive notes or tape record interviews where possible to ensure faithful recording of what people say. Facts must be checked and checked again – rumour or "everyone knows" is not a source. Many journalistic organisations insist on the "two source rule" – which means that every fact must be confirmed by two independent sources before it can be taken as reliable.

The urge to "get it right" is always strong and takes priority over speed. There are no prizes for being fast and wrong. Accuracy is not just about facts but also proper context. An article can be very critical of someone, but it must provide appropriate context, for example making it clear if a critical statement comes from a representative of an opposing political party or an independent source.

Fairness includes being fair in both how you gather information and how you present it. Interviewees have the right to know who you are, what you intend to do with the information they provide, and how you will portray them. On-the-record, fully identified sourcing is always preferred, but this must be done by agreement.

Protection of sources is a controversial subject: while not covered by the law, journalists fight strongly for their right to protect their sources, without whom they believe they cannot continue to do their job. An open and honest relationship with your sources is essential.

Fairness in presentation means presenting all sides to a story. It recognises that no one has a monopoly on the truth.

Sudan Liberation Army rebels survey the remains of Hangala, a village bombed and burnt by government forces and local militia.
Credit: Marcus Bleasdale

In practice this means, for example, allowing someone whom you are criticising to have a chance to respond to those comments within the same story. Someone may be unhappy about an article you write about him, but he should never be surprised because the reporter should always have discussed the critical points with him before publication.

It is important to anticipate the time you will need to get balancing quotations, and to be sure that you raise all the issues from your articles. This can take a lot of effort and often is a cause for hold-ups or at least a lot of last minute anxiety at deadline as you scramble to track down someone you should have gotten a comment from.

Honesty, decency and transparency are also vital for a journalist to keep the public's trust. Moral and ethnical dilemmas arise frequently for a journalist, and each one must come to his or her own conclusions. But these decisions will often balance the pressures to ferret out information at all costs.

Journalists must avoid harassing or intimidating sources, and should gather information openly, legitimately and legally. They should not, as a rule, use hidden recording devises or pay sources for information. Reporters have a right to information, but no more of a right than any other member of the public.

Journalists must absolutely not accept payments or bribes for writing stories or publishing particular information. Stealing from the work of other journalists without fair attribution – plagiarism – is a fast-track way to end a reporter's career, as is lying and fabricating, such as claiming to report from a certain area where you never were.

Putting Others at Risk

In Burundi during the 1990s, many civilians were killed during the war between Hutu rebels and the Tutsi-dominated army. When radio journalist Alexis Sinduhije received information that the army had massacred more than 200 people in a particular village, he went to investigate. But there were some aspects of the story he decided not to pursue – to protect those involved:

"We wanted to interview survivors, but because there were soldiers everywhere, we left after lunch. We didn't go to the tiny hospital to talk with the wounded as normally we would, because we didn't want to make problems for the priest or subject the wounded to further harm by the military."

Keeping Records

It is essential to keep good records of everything you cover in the field and any phone calls you make, including logging the date and time. Look after your notebooks, tapes or videos. Be careful that these do not get into the wrong hands.

Keeping records is important for your own protection. If you are asked to justify what you have reported, or are taken to court over an article you published, you will need to be able to produce your notes to back your story up. You may also be asked to play a role in a war crimes prosecution. This is always controversial for journalists, but if you decide or are compelled to testify, you will need to give accurate details of what you saw, who you met, what they said.

Interviewing Victims and Alleged Perpetrators

Victims. Interviewing victims must be done with care. It is important to maintain journalistic detachment and question facts and assertions, as with any source. But victims may be traumatised by their experience, and must be treated sensitively. This means gaining people's trust, letting them speak at their own pace and not forcing them. It means being honest about who you are, what you intend to do, and how much (or how little) you can help them.

Choose a location that is private, so that the interviewee feels comfortable and other people cannot eavesdrop on your conversation. If you have to work through an interpreter, make it clear that you need a direct translation. Emphasize that you need to know exactly what your interviewee says, with no additional information.

Avoid leading questions. Ask, "What did you see?" not "You saw the soldier pull the trigger, didn't you?" Try to interview people separately, as group pressure can easily influence and exaggerate a story.

Confirm basic details of the person you are interviewing and carefully go through the supporting details of their story, including descriptions of places, names of those present, their positions or ranks, as well as recognizable uniforms or insignia of alleged perpetrators. Ask several times about timing and the sequence of events, and compare the stories of different witnesses.

Most importantly, recognize that you have a duty to try to ensure that your interview does not bring them into more harm. Victims have been killed after talking to reporters, if they have been seen giving an interview, if they have been recognized on a televised report, or if a reporter's notebook has been seized (or lost and recovered by the wrong person).

Alleged Perpetrators. If you are writing a story about a human rights violation, or even a war crime, where possible you should seek to interview those accused of being responsible. This depends on the risk, but the story will be stronger with comment from all involved.

Be open and honest with those accused. Be very straightforward, identify yourself clearly, and never pretend you are someone else or that you are asking about some other matter – this is unethical, and can be dangerous if found out. Explain that you are attempting to establish the truth.

Make sure you have researched the situation in great detail, and build up your questions carefully. Wild or unsupported accusations will result in a shouting match (or get you into serious trouble) but will not advance your search for information.

The basis of the justice system is "innocent until proven guilty". Be diplomatic and keep an open mind. Don't be too confrontational, but always be ready to probe further. Remember to undertake your reporting with a cautious and precise mind, sceptical both of the justifications of the accused and of the claims of the accusers.

War and Peace Reporting

It is often said that when the first shot is fired, truth is the first casualty. Governments and military commanders engage in propaganda and lies, the chaos of conflict makes comprehending the full facts extremely difficult, and emotions affecting both civilians and reporters all conspire to make truth a rare commodity.

War Reporting requires the same international standards of journalism that apply in any circumstance, but brings particular difficulties and indeed personal challenges.

Reporting on a conflict on your own doorstep can be particularly difficult. Rwandan journalist Thomas Kamilindi, who reported for the BBC before the 1994 genocide, knows how hard it can be in such a situation to remain objective:

> Sometimes reporters think they are supermen or women, but no, we are human beings. We have feelings like everyone else, and we are members of society. And we can be caught up in the circle of violence like anyone else. We can identify with the group responsible for violence, like other members of society can do. So that is why as reporters we should be more objective.

In 2003, Kamilindi saw fresh evidence of the breakdown of journalistic standards during the civil war in Ivory Coast:

> I told them, "Look at what you write. Listen to what you say and analyse yourself. If you are demonising people, if you are stigmatising other tribes, other clans, you're involved in violence. How did you get there?" They don't know.
>
> I said, "You're no longer reporters…. I would like to congratulate the politicians who managed to co-opt you, and co-opt you without your knowing it…. Now stand up and be reporters, do you job, report the facts objectively."

Mark Doyle, a BBC correspondent who worked in Rwanda in 1994, was one of the few international journalists to arrive in Kigali in the first days of the massacres. At that point, no journalists had a clear grasp on how to describe what they were witnessing:

> In the early days, I was guilty of misinterpreting the situation. I spoke of chaos and indiscriminate killings, but gradually I learned with my own eyes that it was not chaotic, and it was far from indiscriminate. . . .
>
> I had personal, eyewitness evidence that pro-government militias were killing people in large numbers. . . . And from then on, I started to use the word "genocide".

These reflections illustrate the challenge of remaining objective in a war zone. Emotions and personal reactions are powerful, and may cause you to over or under-report the scale of a tragedy unfolding before your eyes.

(Remarks by Thomas Kamilindi and Mark Doyle made at a symposium on the media and the Rwandan genocide, held at Carleton University (Canada) in 2004. http://www.carleton.ca/jmc/mediagenocide/aboutsymp/index.html.)

Peace reporting refers to strategies to try to ensure that your reporting does not fuel conflict and may even contribute to reconciliation.

Understanding conflict – An understanding of conflict demonstrates that conflict is common in human life but does not inevitably spell violence. War is thus not inevitable, but happens for reasons (power, resources, etc) and is driven by people. Conflict resolution seeks not to create a winner and a loser but rather to address core causes of a dispute and identify ways to satisfy basic needs while avoiding violence. Good reporting can help move away from concepts of inevitable community conflict, and seek to identify underlying causes and possible compromise solutions.

Framing conflict – Journalism depends on shorthand references to convey group identities and help the reporter tell a story. But simplistic use of ethnic or religious identifications, or open use of concepts of "us and them", can be highly provocative. Such abbreviated terminology, thoughtlessly used, can contribute to a sense of polarisation suggesting that conflict is inevitable. Sensitive reporting strives to present the complexity of the situation. Careful journalism in conflict areas will frame stories in the context not just of leaders and groups, but of real people and their diverse experiences and views.

Emotional language – War is highly emotionally charged and journalists are subject, just like everyone, to strong feelings. But the basics of responsible journalism demand that reporters absolutely avoid:

- Hate speech
- Dehumanising language
- Incitement to violence

Even words in common usage can be inflammatory. The common terms "terrorist" or "freedom fighter" are loaded with connotations, whereas phrases such as "armed fighters" or "guerrillas" are more descriptive and less emotional. Journalists in conflict zones should strive for as calm and as moderate a tone as possible, especially when referring to opposing sides.

Responding to Crisis – When a disaster strikes, and the journalistic adrenaline kicks in, that is precisely the time to work with special care. When a bomb goes off, victims are in pain, and politicians hit the airwaves with their accusations, this is a time of great risk for a journalist. In truth, nothing is proven, and there is no way to comprehend the real meaning of the incident in such chaotic circumstances. Jumping to the "obvious conclusion" – i.e., that one ethnic group has mounted a deliberate attack on another – may be wrong, and can escalate conflict on the basis of very unclear or incomplete information. Good journalism is ready not just to publish the facts but also to indicate what is not known with certainty.

Reporting the Peace – Even amid war there are signs of civil society activity, of development, of hope. There are communities who refuse to fall into conflict, and individuals across conflict lines ready to assist and support each other. While extremists grab the headlines and peace agreements falter, substantial proportions of society will oppose conflict and continue working to redevelop a community or achieve a local agreement. Balanced reporting in a conflict area recognizes that violence and war are not the only news.

Cross-community Reporting – War is about division, and an invaluable mechanism for peace reporting is to assemble partnerships or reporting teams across a community divide, and even across a conflict frontier. An article highlighting human rights violations on both sides, for example, can underscore how each side is suffering and feeling remorse. If it is produced by journalists from both communities it will serve to build confidence. Dialogue projects can link people across conflict divides to debate issues, argue differences, and locate solutions.

Safety and Security

Journalism can be dangerous business. Over the past decade, nearly 350 journalists have been killed doing their job. You can never remove the element of risk, but there are some simple principles which can help you reduce your exposure in conflict areas.

Information and reliable local contacts are your most important safety measures. Know where

you are going, know the current situation, and be in close contact with people from the location who can direct you and drive you safely.

Be calm and prepared, so that you are mentally and physically up to the task. Recognize that your personal safety is your business, and do not leave it to anyone else to make decisions for you. If possible, undertake hostile environment safety training beforehand and carry appropriate medical kit.

Most importantly, prioritize your life: never put a story above your personal safety. Always ask yourself whether a risk you are about to take is absolutely necessary.

Beyond these core principles, there are a number of useful tips:

- Do not travel by yourself, and make sure that someone knows where you are going, your route, if possibly whom you will meet, and when you can be expected to return.
- Meet unfamiliar contacts in public places.
- Do not travel in military vehicles or wear military attire or clothes which could be taken for a uniform. Never carry a weapon.
- Carry photographic identification and do not pretend you are not a journalist. In most cases, be sure to identify yourself, and your vehicle, as media, but check on local conditions so as not to draw attention to yourself.
- Plan a fast and safe route out of any danger zone, and wear comfortable clothing and shoes so that you can move with ease.
- Be aware of local sensitivities before taking pictures. In some cultures, people do not want to be photographed. Taking photographs around military installations without permission will often result in your camera, and you, being seized.
- If working both sides of a front line, do not provide information to the other side.
- Take cigarettes and other small items as sweeteners with you. Take emergency funds and a spare copy of your ID in a concealed place. Keep emergency phone numbers at hand.
- If troops or locals appear threatening, stay calm and try to appear relaxed. Act friendly and smile. Remember that they may be poorly trained, inexperienced – and very frightened – and will be suspicious of why you are in a conflict area.

There are a number of organizations working in the field of safety and security for journalists and other professionals in conflict areas. Some of these provide valuable, if expensive, training and awareness courses. The International News Safety Institute has a code of conduct for news organisations.
See: www.newssafety.com/safety/index.htm

EXERCISES

1. What are the three main principles of international journalism?
2. What is the first casualty in war and how do journalists become part of the problem?
3. What are the three key principles for personal safety and security in a conflict area?
4. In this chapter you've learned about some of the problems of field reporting in the middle of a conflict. Consider the following ethical dilemmas, and discuss them with colleagues if you have a chance.

   a) You are a radio reporter visiting a camp for internally displaced persons, in northern Uganda, where the rebel Lord's Resistance Army (LRA) has been operating for ten years. You ask camp residents about whether they want the LRA put on trial for war crimes and you get several outspoken interviews. Your report will be broadcast on the local radio station. You know that the rebels listen to it, and that they have a history of attacking the camps. Should you give the interviewees false names? Should you change the name of the camp itself?

   b) A young man walks into your news organisation and asks for you by name. He says he has important information about a massacre and wants to take you to the scene to show you what happened. What efforts can you make to establish the facts? What should you publish?

   c) A rebel organisation calls your newspaper to claim responsibility for a massacre. They threaten to kill another group of civilians unless you agree to publish their statement of aims. Under local press laws, publishing a statement from this rebel group is punishable by a stiff fine or time in jail. What do you do?

CHAPTER 7 – ALTERNATIVE JUSTICE MECHANISMS

International courts and tribunals are not the only way of dealing with serious human rights abuses during conflicts. Some countries have chosen to deal with the past through truth and reconciliation commissions, which put a premium on discovering what happened rather than punishing perpetrators. In some cases, countries have set up truth and reconciliation commissions in addition to war crimes courts. In other countries, there have been more traditional methods of seeking justice. This chapter explains some of these alternatives.

Customary Law Courts

In this section, the term "customary law" is used to mean local hearings, investigations or courts run on traditional lines and with different rules from full courts of law.

The most interesting example of how customary law is being used to try human rights violations is to be found in Rwanda. There, in 2005, local village courts known as Gacaca began to meet once a week to discuss who did what during the 1994 genocide.

Thousands of people had been in jail since 1994, waiting for their cases to be heard in the regular courts. But because of a shortage of judges, lawyers and funds, it was estimated that the process could take a hundred years.

It was to tackle this crisis that the Rwandan authorities set up the Gacaca courts. The name Gacaca comes from the traditional Kinyarwanda word for community-based justice and literally means "on the grass". The hearings are held in the open air. Respected members of the local community are elected to act as judges and given basic training in legal matters. It is the duty of every inhabitant of a village to attend the Gacaca.

The job of these traditional courts is to make decisions about people accused of lesser crimes. Anyone accused of murder or rape will have their case heard in a higher court. But the decision about whether to transfer a case is taken at the Gacaca.

The main criticism of these kinds of courts is that they may not be fair. Critics have suggested that people attending them might be swayed by majority views or cowed into silence; or that they might use the system to settle old grievances. In 2005, groups of Hutus fled across the border into Burundi, claiming that Gacaca was designed to destroy them.

Gacaca are difficult for a journalist to cover, not only because of the controversy surrounding them, but because the sessions take place in remote villages.

Truth and Reconciliation Commissions

Truth commissions are not courts. Instead, their primary function is to establish what happened. Often, they have been empowered by their statutes to either offer an amnesty or a pardon to someone who admits to having committed human rights abuses or war crimes. Or they may be able to offer a reduced sentence – akin to plea-bargaining in a regular court, where a prosecutor may ask for a reduced sentence for someone who has agreed to co-operate.

Obviously, this is controversial – not least from the point of view of victims or relatives of victims. Yet sometimes countries that have been through extremely painful periods have decided this is the best way forward in the interests of truth, reconciliation and peace.

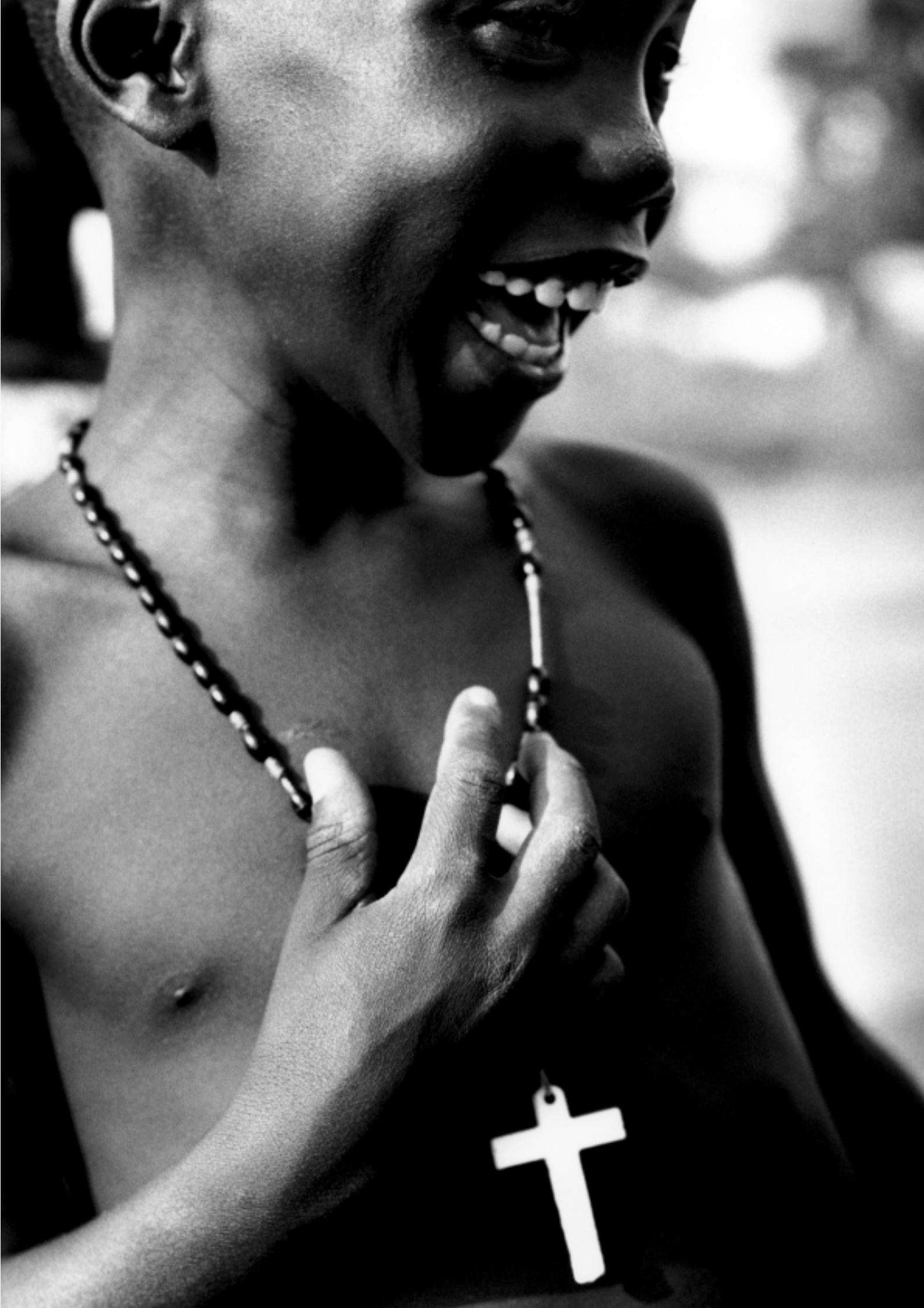
You may have to cover such institutions, in which case you will have to explain to the public why such an approach was chosen, what it is expected to achieve and whether the process is working. What matters above all in these cases is the view of the victims or their relatives. The work of the truth commission is directly concerned with victims and if you do not talk to them, you will miss the whole point of the story.

South Africa

The best-known of these organisations was in South Africa – the Truth and Reconciliation Commission, known as the TRC. It was set up in 1995, to deal with the effects of apartheid.

The TRC investigated human rights abuses, gave financial support to victims and gave amnesties to people. It was an alternative to criminal prosecutions.

Children in Northern Uganda are given rosaries by their parents in the hope this will protect them from the Lord's Resistance Army.
Credit: Marcus Bleasdale



To get an amnesty, a person had to prove that what they had done was "with a political aim" and to show that they were speaking the whole truth. If their testimony was unconvincing, they were not given amnesty. Out of more than 7,000 who asked for amnesty, only 849 were granted it – which shows how rigorous the process was.

Even so, the issue of amnesties provoked real opposition. But the main bone of contention was the size of reparations to victims. The amounts were thought to be far too small. As a journalist, it's worth considering what real powers a truth commission has and whether those powers are being used in ways that earn the respect of the wider community.

The South African experience has encouraged other countries to set up commissions, mainly because it set an example for exposing the truth about the past and placing the victims centre stage. That does not mean it achieved all it had hoped, in terms of "reconciliation". It is still a subject of considerable controversy in South Africa.

Sierra Leone

In Sierra Leone, a Truth and Reconciliation Commission was set up separately from an international criminal tribunal known as the Special Court for Sierra Leone. It was intended to be part of the healing process following the devastating civil war, to create an impartial record of what had happened and try to explain why it had happened.

Operating at the same time as the Special Court, Sierra Leone's TRC brought into focus the different roles of courts and truth commissions and the potential pitfalls that could occur if they exist side by side. For instance, some people stayed away from Truth Commission meetings because they feared that any information they gave would find its way to the Special Court.

This is an excerpt from an article by a Rwandan journalist working for the Hirondelle news agency based in Arusha, Tanzania.

Gacaca Soul Tested in Rwandan Village

Mugusa, July 8th, 2005 (FH) – Boniface Seruntaga, 59, would be considered a hero by some Rwandans but most in his village probably see him as a traitor. He is leading a campaign against silence on crimes committed in his neighbourhood during the 1994 genocide.

"People of God, speak out. Tell the truth. You can't hide for ever," the diminutive former prisoner calls out to over 100 of his community members seated on patches of shade in a thin forest on the edge of his village. . . . The village is meeting here for this week's session of Rwanda's semi-traditional genocide courts known as Gacaca. Elected members of the community preside over the courts and everyone else is encouraged to testify, prosecute, defend or cross-examine the accused…

Rwanda is counting on its people invoking a lonMg-held spirit of honesty by community members standing before their neighbours. This was the backbone of the original traditional Gacaca courts.

"I wonder how everyone can be so quiet," Silver, a genocide survivor in his late forties says after a fruitless inquiry into the killing of his brother during the genocide. "It is very surprising and sad that none of you knows anything or saw anything about a murder committed among you.…You know what happened," Silver pleads, as a tear drop rolls down his cheek. Everyone else remains silent.

Suddenly, Seruntaga raises on his feet. "We can't go on like this," he shouts. "I hoped the concerned men would stand up and tell us the truth. They are here among us. Silver is right."

Seruntaga, who has himself confessed to murdering two neighbours during the genocide, calls out the names of people he claims to have seen at Silver's house the day his brother was killed.

As soon as he completes his list, about a dozen men, visibly angry, stand up and either walk towards the front of the gathering or start denying Seruntuga's allegations from where they are standing.

"It is not yet time for trials," the presiding judge reminds the court. "Each one of you will have time to talk about this when the trials begin. We are now only investigating."

Not all places in Rwanda are like Mugusa. Some communities have seen more guilty pleas and impressive numbers of people coming forward with testimonies. But Mugusa is not an isolated example either. Government, Gacaca officials and observers have acknowledged that the courts are facing severe difficulties getting evidence in some areas. These are the places where the soul of Gacaca is being tested.

The commission itself has suggested that courts "are limited in their ability to find the broader truth":

> Truth and Reconciliation Commissions represent one of the most viable means of securing a sustainable peace. Such commissions can strengthen the peace through the establishment of an impartial historical record of the conflict and the creation of a public understanding of the past that draws upon broad based participation. . . . It is only when the full truth (or as close to the full truth as possible) is placed squarely before the public that society can examine itself honestly and robustly. It is this cathartic exercise on the part of the nation that permits it to take genuine measures to prevent the repetition of the horrors of the past.

These sentiments apply to tribunals as well as truth and reconciliation commissions, and underscore the importance of the role of a journalist in contributing to the process by reporting reliably and responsibly on war crimes and justice issues.

Burundi

A new example for Africa was created in June 2005, when the UN adopted a resolution to create a truth commission and a special court to investigate and prosecute war crimes and human right violations during Burundi's civil war. The commission, with three international and two Burundian commissioners, will investigate killings which took place from independence in 1962 until the signing of the Arusha Peace Accord in 2000. Their findings would help the special court to prosecute those responsible for the cycle of massacres of Hutus and Tutsis.

A list of truth commissions is available through the library of the United States Institute of Peace. www.usip.org/library/truth.html

Traditional Rituals

There are other ways of dealing with the aftermath of conflict that focus on reconciliation rather than prosecution. One was highlighted in 2005, at a time when the ICC had issued warrants of arrest against several leaders of the Lord's Resistance Army (LRA), a rebel group operating in northern Uganda. They were accused of crimes against humanity.

Meanwhile, there was a peace process going on in northern Uganda, and local leaders from the Acholi ethnic group told the ICC that some traditional forms of justice could be more successful than the court system. They said that previous members of the LRA had been held accountable this way for what they had done, had made promises about the future and had again become part of the community.

A key factor in this case is that some 20,000 of those who took part in the LRA's atrocities were children kidnapped from villages and forced to act as porters, sex-workers or soldiers. For some people, punishing them made little sense.

A recent IWPR report from northern Uganda highlighted the different views that local people have about the merits of prosecution versus a truth and reconciliation without penalties.

One woman in a refugee camp said LRA leader Joseph Kony should definitely be brought before the ICC. "Why are they taking so much time to catch Kony?" she asked. "He should be arrested and punished for the suffering he has put us through. He should pay, instead of coming back and getting a big job when our whole lives have been destroyed."

But a young man in the camp worried that the ICC's actions could complicate and even endanger the delicate mediation attempts under way. Under the amnesty scheme that is part of the mediation, "at least the rebels allowed some children to come back home", he said. "Now they are going to run further away, fearing imprisonment, and they will take more of our brothers and sisters."

EXERCISES

In this chapter, we have looked at systems other than courts and tribunals for dealing with past conflicts. Consider the following issues:

1) How important is it to have a historical record?
2) Is it always essential to punish war criminals?
3) What ways might local leaders use to deal with justice issues in your community? Are they enough to cope with people who have committed rape or murder? Would victims or their families accept the perpetrators of such acts back in their midst?

CHAPTER 8 – THE LAW

This chapter will provide a brief overview of the law used by the International Criminal Court and other tribunals, to try individuals suspected of war crimes or other grave human rights violations.
The three categories of crimes over which international courts have jurisdiction are:

- War Crimes – known technically as Violations of the Laws and Customs of War;
- Crimes Against Humanity;
- Genocide.

These categories are broken down into those covered under treaty law and those covered under customary law – the term given to an unwritten body of law that is constantly changing. It applies to state practices that are so "widespread, representative and virtually uniform" that they are universally accepted as general rules by which states are bound.

War Crimes

A war crime is a serious violation of international humanitarian law – a mixture of multilateral treaties, UN Security Council resolutions, customary law and precedents set by various international courts – committed during an armed conflict.

Crimes Against Humanity

At the International Military Tribunal in Nuremberg, crimes against humanity were defined as:

> Murder, extermination, enslavement, deportation, and other inhumane acts committed against civilian populations, before or during the war; or persecutions on political, racial or religious grounds in execution of or in connection with any crimes within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.

The statutes of all subsequent criminal tribunals have included crimes against humanity.

Ethnic Cleansing

The term "ethnic cleansing" is often heard in relation to war crimes. It refers to the deliberate, forcible displacement of populations belonging to a particular ethnic or religious group. The action taken can be intimidation, deportation, or plain murder, but the object is the same – to remove the target group comprehensively and permanently.

Ethnic cleansing is a descriptive term which may include a range of acts outlawed by existing laws and conventions – for instance, murder, sexual abuse, and the destruction of homes and of cultural or religious sites important to the community. The actual deportation of civilian populations is barred by the fourth Geneva Convention while Additional Protocol II extended the prohibition to "non-international armed conflicts". The Nuremberg charter said that crimes against humanity included "murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during a war".

The UN tribunals for the former Yugoslavia and Rwanda expanded the list to include rape and torture. The International Criminal Court expanded it further, to include enforced disappearance and apartheid.

They all state that crimes against humanity are applicable irrespective of whether the perpetrator is a citizen of the country where the crime was committed and regardless of whether the crime is committed during war or peace. They also state that the crimes must be relate to the persecution of an identifiable group of persons.

Immaculate (32) in Dro Dro hospital north of Bunia, Ituri province Eastern Congo awaits treatment from locals who have no medical supplies.
Credit: Marcus Bleasdale

Genocide

In December 1948, the UN General Assembly adopted the Convention on the Prevention and Punishment of the Crime of Genocide, which came into effect in January 1951.

The treaty outlaws genocide, defined as "any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such":

- Killing members of the group;
- Causing serious bodily or mental harm to members of the group;
- Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- Imposing measures intended to prevent births within the group;
- Forcibly transferring children of the group to another group.

More than 130 nations have ratified the treaty, which not only confirms genocide as a crime but requires signatories to the treaty to take measures to prevent and punish actions of genocide in war and peacetime. But it was 50 years before the law was enforced anywhere in the world.

In September 1998, the International Criminal Tribunal for Rwanda found Jean-Paul Akayesu, the former mayor of a small town in Rwanda, guilty of nine counts of genocide. Two days later, Jean Kambanda became the first head of government to be convicted of genocide.

Where did the word "genocide" come from?

The term "genocide" was coined in 1944 by a Polish Jewish scholar named Raphael Lemkin, who defined it as "a wilful attempt to destroy an ethnic group".

Lemkin had long been concerned about the crimes committed in wartime, and during the Nuremberg trials he lobbied prosecutors until eventually they included genocide in the charges. The indictments against some of the major war criminals tried at Nuremberg accused them of having conducted "deliberate and systematic genocide".

It is important to note that, as defined, the crime of genocide requires proof of intent to destroy a group of people. But it also says intent to destroy a group can be "in whole or in part". Thus the first conviction for genocide in the Yugoslav tribunal related to the massacre of Bosnian Muslims at the besieged town of Srebrenica.

Conventions: An Overview

The Hague Conventions

In 1899, the Netherlands convened an international conference in The Hague, which resulted in the prohibition of all weapons that cause "unnecessary suffering" or "superfluous injury", on the grounds that they were contrary to the laws of humanity. Among the weapons banned for military use was the hollow-point or dumdum bullet, because it caused greater injury than a conventional projectile. This was the first major codification of laws and customs of warfare.

In 1907, the second Hague convention expanded these provisions to include additional weapons and to limit warfare to attacks against objectives relevant to the outcome of military operations. By the outbreak of World War I, there was a consensus among states that violations of the Hague conventions constituted war crimes. However, as time went on, new weapons caused ever greater human suffering, requiring additional regulation.

The 1949 Geneva Conventions

In 1949, the Swiss government convened an international conference to establish laws that would further limit the barbarity of warfare. The result was the four Geneva conventions of 1949, which form the backbone of international humanitarian law.

Unlike the Hague conventions, which limited the type of permissible weapons in war, the Geneva conventions were designed to provide protection to civilians, and to combatants who were no longer able to fight because they had surrendered, been captured or injured. Each convention offers protection to a particular category:

The First Geneva Convention protects soldiers wounded in the battlefield.

The Second Geneva Convention expanded that protection to cover combatants wounded or shipwrecked at sea.

The Third Geneva Convention provides protections for prisoners of war.

The Fourth Geneva Convention provides protection for civilians caught up in war.

Together, the four Geneva conventions of 1949 spell out what is legal and what is not in an international armed conflict. Although they are long and detailed, they essentially come down to the following basic rules:

- It is forbidden to kill or injure an enemy who surrenders.
- The wounded and sick shall be collected and cared for by the party to the conflict which has them in its power.
- Hospitals, ambulances, medical personnel and any building or automobile with the Red Cross or Red Crescent emblem must not be harmed.
- Parties to a conflict must refrain from using weapons or methods of warfare that cause unnecessary losses or excessive suffering.
- Captured combatants and civilians under enemy authority are entitled to respect for their lives and dignity. The authorities in charge must protect them against acts of violence, as well as enable them to correspond with their families and receive humanitarian aid.
- Captured combatants cannot be punished for lawful acts of war. If they are accused of unlawful means, they are entitled to fundamental judicial guarantees. They must not be held accountable for an act they did not commit, nor subjected to physical or mental torture, corporal punishment or cruel or degrading treatment.
- Parties to a conflict shall at all times distinguish between the civilian population and combatants and refrain from targeting the civilian population. Attacks may only be directed against military objectives.

In addition, the conventions highlighted the following grave breaches as particularly heinous crimes worthy of prosecution:

> Wilful killing; torture or inhuman treatment, including medical experiments; wilfully causing great suffering or serious injury to body or health; extensive destruction and appropriation of property not justified by military necessity; forcing a prisoner of war or civilian to serve in the forces of a hostile power; depriving a prisoner of war the right to a fair trial; unlawful deportation or transfer of a protected civilian; unlawful confinement of a protected civilian; the taking of hostages.

In the decades following the 1949 Geneva conventions, warfare underwent a profound change. While World Wars I and II were international armed conflicts, the emergence of new nation states brought wars of national liberation or self-determination. Although the Geneva conventions were clear on the laws of war for an international armed conflict, they fell short of regulating civil wars involving guerrilla armies, or opposing forces within a state.

Article 3 of each of the four conventions – frequently referred to as Common Article 3 – calls on parties to an internal conflict to respect some basic principles of humanitarian behaviour, including: providing humane treatment to civilians and combatants who have laid down their arms, or are no longer able to fight; and providing medical treatment to the wounded and sick. However, it does not confer any special status on captured combatants.

Rights and Duties of Combatants

This list spells out how combatants must behave, to be entitled to protection under the Geneva conventions:

- Combatants must distinguish themselves by carrying their arms openly and wearing uniforms or other markings showing they are part of an organised fighting force.
- Combatants who meet these criteria must be considered prisoners of war (POWs) if captured by opposing forces and must be treated humanely, not subjected to torture, violence or intimidation. When questioned, they are only required to give rank, date of birth and serial number.
- Combatants who deliberately fail to distinguish themselves as such, and thus endanger civilians by attempting to blend in with them, are not entitled to protection under the Geneva conventions.
- If it is unclear whether a person is entitled to POW status, he must be treated as though he is, until a “competent tribunal” determines his status.

Soldiers and Guerrillas

In contemporary international humanitarian law (such as the Geneva conventions), the term combatant means both a soldier or an irregular, whether a volunteer, a conscript or a reservist, a member of a paramilitary group, a militia or a rebel force, who is participating or has the right to participate in armed conflict.

A combatant can kill enemy soldiers without fearing that they will be tried for the usual criminal offence of murder, and if captured, he or she must be treated as a prisoner of war rather than placed in an ordinary prison. That includes those suspected of committing war crimes or other breaches of international humanitarian law.

Members of the armed forces, and all other state-run paramilitary groups such as a presidential guard, the interior ministry or security agency's uniformed military forces, and others would count as combatants if they are used in warfare. They should be under a command responsible for the conduct of its subordinates to a party to the conflict, be subject to an internal disciplinary system that enforces compliance with the laws of armed conflict, and they should wear uniforms or combat gear that will distinguish them from the civilian population.

In Rwanda, the youth wing of the ruling party in 1994, the Interahamwe, was responsible for many of the worst atrocities during the genocide. The politicians who created the Interahamwe, its national leadership, and several of its leaders in specific regions are being held accountable for many of the actions of the whole militia group at the ICTR. The prosecution has described the militia as the spearhead of the genocide. Georges Rutaganda, the second vice-president of the Interahamwe was sentenced to life imprisonment at the ICTR in 1999.

In international conflicts, irregular forces are considered lawful combatants if they adhere to certain standards. These include that they distinguish themselves from the civilian population (i.e. look like combatants, for example wearing uniforms); carry weapons openly during engagements or deployments; and are commanded by a responsible officer. They are generally expected to comply with international rules relating to armed conflict.

The Additional Protocols to the Geneva conventions extend the protections granted to combatants and civilians in non-international conflicts, and Additional Protocol II states that if a party to a conflict is "under responsible command" and controls part of the national territory, so that it is able to carry out "sustained and concerted military operations", its insurgents are entitled to the protections granted to prisoners of war.

Since most wars in the decades after 1945 were internal conflicts, the protections specified in Common Article 3 were deemed to be insufficient. So Switzerland convened a conference that resulted in the 1977 Additional Protocols to the Geneva conventions, which extended the protections granted to combatants and civilians in "non-international" conflicts.

Additional Protocol I extends the protections granted to soldiers and civilians in wars of self-determination and national liberation. It also commits states not to recruit **child soldiers**, defined as those under the age of 15, and to ensure that children are not actively involved in combat.

Furthermore, it also requires military commanders to ensure that subordinate soldiers are aware of their obligations under international humanitarian law and to prevent and stop any breaches of these rules. This underlines the important concept of **command responsibility** – already featured in many ICTY cases – where an officer can be held accountable for a war crime committed by men under his command even if he was not present and did not order them to commit it.

Additional Protocol II supplements Common Article 3 with several more specific provisions. It states that if a party to a conflict is "under responsible command" and controls part of the national territory, so that it is able to carry out "sustained and concerted military operations", its members are entitled to the protections granted to prisoners of war.

APPENDIX 1: Examples of Court and Other Reports

Example 1: Courtside

"I Never Saw Ntahobali at Roadblocks," Says Witness

Arusha, February 2nd, 2006 (FH) – A witness called in defence of Arsene Shalom Ntahobali, an alleged former militia leader, Thursday told the International Criminal Tribunal for Rwanda (ICTR) that contrary to prosecution allegations, he had "never" seen the accused manning a roadblock during the 1994 genocide.

The witness code-named "WCNJ" to protect his identity admitted that roadblocks were set up around Butare (southern Rwanda) during the massacres of Tutsis and that during that time he had never met Ntahobali.

"I never met the accused at the roadblocks", explained the witness, adding that he had criss-crossed the town many times on his way to visit his sister.

WCNJ went on to challenge the allegations of previous witnesses that a roadblock had been set up near the residence of Ntahobali's parents.

In February 2004, one witness testified that on April 21, 1994 he had seen Tutsis arrested at that roadblock, including women who were raped and later killed on the orders of Ntahobali.

Many other witnesses made the same allegations.

Arsene Shalom Ntahobali is on trial together with his mother, former minister of gender Pauline Nyiramasuhuko and four other former officials of Butare.

Nyiramasuhuko, like her son, is also charged with rape. The trial continues Monday.

Example 2: Courtside with "main story" plus secondary matters

Milosevic Courtside

Senior army officer says Milosevic personally insisted on military and police discipline during Kosovo conflict.

By Michael Farquhar in London (IWPR, 11-Nov-05)

The trial of former Yugoslav president Slobodan Milosevic heard evidence this week that the accused personally ordered senior army and police officers to take a tough stance on crimes committed by their men during the Kosovo conflict.

Milosevic is accused of overseeing a systematic campaign of murder, rape and looting directed against Kosovo's ethnic Albanian population in 1998 and 1999, which allegedly drove some 800,000 civilians from their homes.

But the latest witness to speak in his defence, retired Yugoslav Army, VJ, security chief Geza Farkas, said he was present on two separate occasions when the former president stressed the need to investigate and prosecute all members of the security services suspected of such offences.

Milosevic was also emphatically opposed to the presence of Serb paramilitaries in Kosovo, the witness claimed.

In a further development, the last hearing scheduled this week was cancelled after the accused failed to show because of bad health. With a subsequent medical report kept under wraps, it remained unclear whether Milosevic's latest bout of ill health relates to long-term problems caused by his high blood pressure.

Testifying prior to this halt in proceedings, Farkas told judges that he was appointed head of security of the VJ on March 24, 1999, the same day that NATO began an 11-week bombing campaign against Yugoslavia in an effort to halt what it considered to be brutal treatment of the local Albanian population.

A month before his appointment, said Farkas, when he was still an assistant defence minister in the Yugoslav government, Milosevic had summoned him to a meeting to inform him of this new posting. The president apparently took advantage of this early opportunity to insist on the importance of preventing soldiers from tarnishing the image of the VJ with criminal behaviour.

Farkas recalled that after he took up his new job on March 24, what were initially sporadic reports of crimes committed by VJ troops in Kosovo began to gather pace. On May 1, on the orders of VJ chief of staff Dragoljub Ojdanic, he set out from Belgrade to investigate.

Farkas argued that some crimes blamed on the army in Kosovo in fact resulted from blood feuds between ethnic Albanian families. In other cases, he said, those responsible were "infiltrators" who had got hold of VJ uniforms. But he acknowledged that individual members of the army also stepped out of line.

Having returned from Kosovo and compiled a report on his findings, Farkas met with Milosevic and other senior police and army officers on May 17. Milosevic apparently reiterated that criminal behaviour within the army and the police should be stamped out and that any instances which occurred were to be prosecuted immediately.

After the meeting, Farkas said, he ordered a team headed by his deputy, Aleksander Vasiljevic, to travel to Kosovo. A few weeks later, Vasiljevic apparently reported that prosecutions were underway and that "investigations had been intensified".

The witness claimed that some 382 prosecutions were initiated during the conflict in Kosovo for crimes including theft, rape and murder. "What the army could do, it did," he insisted.

Prosecutors say VJ documentation shows that the army in fact only ever convicted a handful of its members for murders committed in Kosovo. Farkas said the process of prosecutions was interrupted when NATO bombing forced a withdrawal from the territory in June.

Farkas also said that at the meeting on May 17, 1999, Milosevic had been displeased to hear that the Serbian police had accepted an offer of 30 men from the notorious paramilitary leader Zeljko Raznatovic, better known as Arkan. Some of these individuals were already under investigation for crimes, Farkas told judges.

Insisting that the 30 men in question be removed from Kosovo, Milosevic apparently declared "in no uncertain terms" that such groups should not be allowed to operate in future.

The witness dismissed a conflicting account of the same meeting given by Vasiljevic, who gave evidence in the trial in February 2003. Vasiljevic testified that, on hearing that Arkan's men were operating in Kosovo, Milosevic "didn't react at all, as if it hadn't been mentioned".

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Farkas admitted that, unlike Vasiljevic, he did not have any notes from the meeting.

During cross-examination by prosecutor Geoffrey Nice, Farkas denied that he had been appointed as the army's chief of security largely because the president considered him to be an easily-manipulated "yes man".

He admitted being an old school-friend of VJ chief of staff Ojdanic. But he said it was the first time he had heard Nice's suggestion that his predecessor in the post of security chief had been sidelined after publishing an article arguing for a multilateral approach to the situation in Kosovo.

Farkas also denied accusations that as the assistant defence minister responsible for Yugoslavia's civil defence plans in the run-up to the conflict in Kosovo, he had been involved in preparations to secretly arm the territory's ethnic Serb population.

As evidence for this claim, Nice produced an order dated May 21, 1998 requiring local officials to compile lists "for the purpose of arming of the population". The document went on to say that the focus should be on protecting settlements "in which Serbs and Montenegrins are populations in a minority and are increasingly becoming targets of attacks by Albanian terrorists".

Farkas replied that the distribution of weapons was carried out in accordance with Yugoslav law.

The trial will resume on November 15.

Example 3: factual reporting on procedural matters

Court news: Opening Belgrade's Archives

(IWPR, 27-Jan-06)

The head of Serbia and Montenegro's Council for Cooperation with the Hague tribunal, Rasim Ljajic, has said that Belgrade will open its archives to United Nations war crimes prosecutors in an effort to end allegations of official obstruction.

Geoffrey Nice, the prosecutor presenting the war crimes case against former Yugoslav president Slobodan Milosevic, has been particularly vocal in the past about the difficulty he says his office faces in trying to get hold of key documents from the Serbian authorities.

A planned trip to Belgrade by chief prosecutor Carla Del Ponte next month is partly intended to increase pressure to hand over such material, according to her spokesperson Florence Hartmann.

A senior source within the prosecution told IWPR that "it remains to be seen" what the outcome of the latest promise of cooperation will be. The decision still needs to be approved by the Council of Ministers and, even then, much will depend on how effectively it is actually implemented.

Example 4: Wider reactions to and implications of a courtroom event

Kosovo Jubilant at KLA Acquittals

Kosovo's majority Albanian population welcomes result of Hague tribunal's first case against former guerrillas.

By Janet Anderson in The Hague (IWPR, 2-Dec-05)

The streets of Pristina erupted with flags, horns and celebratory gunfire on December 1 as news spread that the Hague tribunal had acquitted two of the first three members of the Kosovo Liberation Army, KLA, ever to face trial there for war crimes.

Judges in The Hague sentenced one former foot soldier, Haradin Bala, to 13 years in prison for his role in a KLA prison camp in the village of Lapusnik where Serbs and suspected Albanian collaborators were tortured and murdered in 1998.

But they declared themselves unconvinced that former commanders Fatmir Limaj and Isak Musliu had played any role at the facility. Limaj, who held a senior role in the guerrilla army which helped drive Belgrade security forces out of Kosovo, gained a high profile as a politician in the wake of the conflict.

While the verdict has met with a predictably downbeat response in Serbia, reactions amongst Kosovo's majority ethnic Albanian population have been jubilant. Many feel that the court ruling, despite confirming that horrific individual crimes were committed, vindicates the KLA as an organisation.

The judgement comes at a particularly welcome time for Albanians in Kosovo, with talks set to begin on the future political status of the region. Most hope that the process will result in independence from Belgrade.

Observers in Pristina described a collective sense of relief as the judgement hearing in the case was broadcast live on television screens in homes and bars across Kosovo.

The resulting celebrations were a far cry from the dire predictions published in local newspapers of what might happen if the three were found guilty. Just two days before the judgement was issued, an estimated 20,000 people filed through the streets of Pristina protesting the innocence of the three men.

When Limaj went to The Hague in 2003, Kosovo's then prime minister, Bajram Rexhepi, declared that the trial would give the accused "a chance to prove his innocence and the purity of the war that was led by the KLA".

Some observers now see particular significance in the judges' decision to dismiss charges of crimes against humanity against the three accused. They did so on the grounds that there was insufficient evidence that the atrocities at the Lapusnik camp were committed as "part of a widespread or systematic attack directed against a civilian population".

"It's been understood here as a cleansing of the resistance," said Petrit Selimi, the managing director of Pristina's new Daily Express newspaper. The verdict, he explained, has been "seen as recognition that there were [individual] crimes, not a campaign".

Kosovo parliamentarian Enver Hoxhaj told IWPR that the judgement is "a good message while Kosovo's final status talks are going on", explaining that it has given the local population a feeling that they are supported by the international community.

With Kosovo's president Ibrahim Rugova in bad health and former prime minister Ramus Haradinaj currently awaiting a Hague war crimes trial, there have been concerns that Albanians will lack a strong figurehead for the talks on Kosovo's future.

Analysts in Kosovo told IWPR that Limaj is viewed by some as having the potential to fill the vacuum. Selimi explained that Limaj is now viewed as a "sympathetic figure" because of the

dignity with which he went to The Hague.

Hoxhaj, who is a senior member of Limaj's Democratic Party of Kosovo, PDK, told IWPR that he thought Limaj would step back into the "crucial" role he played in the party before being indicted. "We missed him," he added.

The judgement has also served to support the view that Hague tribunal's first case involving former KLA fighters was in fact only launched as part of an effort to show the court's impartiality with regard to the various parties involved in the Balkans conflicts of the Nineties.

A series of senior Serbian generals and politicians, including former Yugoslav president Slobodan Milosevic, have been indicted for their role in alleged ethnic cleansing in Kosovo in 1999.

There has also been speculation about what consequences the outcome might have on the joint trial of Haradinaj and two others said to have been his subordinates in the KLA. They are charged with involvement in the abduction and murder of Serbs, Roma and suspected Albanian collaborators.

Edgar Chen, a long-time observer of proceedings at the Hague tribunal for the Coalition for International Justice, told IWPR, however, that it is important to remember that these are two distinct cases. "Haradinaj is charged under a different set of alleged facts," he said. "Judges will have to consider Haradinaj's case on the evidence that [prosecutors] and his defence presents."

The judges hearing the case against Limaj, Musliu and Bala in The Hague appeared keen to emphasise that the acquittal of two of the accused did not mean that crimes had not taken place.

They underlined that civilians had been held in horrific conditions at the KLA camp in Lapusnik, with "gross overcrowding" and some chained to the wall; KLA soldiers, often wearing hoods to hide their faces, beat inmates into unconsciousness; detainees, including some who had been shot, were denied medical treatment despite the existence of a clinic in the village where KLA personnel were treated.

Apart from three prisoners who were murdered at the camp itself, Bala was also found to have taken part in the massacre of nine prisoners in nearby mountains.

But the judges said they were not satisfied that Limaj and Musliu held positions in the KLA which would have made them responsible for the camp.

While there was a "strong possibility" that Limaj had been personally present at the facility, they said, there was not enough evidence to convict of personal involvement crimes there. As for Musliu, the judges ruled that there was in fact "little evidence to identify... [him] as having any kind of involvement in the prison camp".

Meanwhile, reactions in Belgrade to the verdict have been unsurprisingly gloomy. Rasim Ljajic, president of Serbia's National Council for Cooperation with the Hague tribunal, told the Beta news agency that the result would bolster the positions of those who are hostile to the United Nations court.

Example 5: Court-related analysis not constructed around a particular courtroom event

Defence Teams Demand Equality

Lawyers for defendants at the Hague and Arusha tribunals claim they are not accorded the same resources and status as prosecutors.

By Helen Warrell in The Hague (IWPR, 23-Dec-05)

"Lack of resources undermines the accused's rights to a fair trial," argued Colleen Rohan, defence counsel for one of the Bosnian Serb officers accused of organising the 1995 Srebrenica massacre, in court last month.

Her colleague Natacha Fauveau Ivanovic was even more vehement.

"The accused did not ask to be indicted, and if the international community decides to try them then it must also meet the obligations in the statute which say the accused should have the means for their defence," she said.

Lawyers representing six of the defendants were claiming that unless the registry granted them more money, they could not afford to prepare for their case.

The Hague tribunal's own rules state that an accused must be tried "in full equality" – with the necessary facilities and legal aid – to ensure that there is "equality of arms" between prosecution and defence.

But the Dutch court, and its sister court dealing with the Rwanda genocide, set up by the United Nations Security Council in 1993 and 1994 respectively, have long faced claims that the position of the defence is far from being "equal" to that of the prosecution.

The problems surrounding the tribunals have led the next generation of international courts to take a radically different view of what constitutes "equality" for the defence.

John Jones, who is representing Naser Oric at the Hague tribunal, says money – which the registry dispenses to the defence – is one of the key issues.

Defence teams at the Hague court maintain that prosecution lawyer receive substantially more funding than them.

"The prosecution submits its own budgets, they can quite boldly ask for what they want," Jones told IWPR. "The defence needs to be in the same position."

However, registry officials in The Hague and Arusha argue that they have limited resources, and must guard against corruption by defence counsels.

Following investigations in 2001 and 2002, both tribunals tried to implement measures to prevent alleged fee-splitting where a lawyer agrees to share a part of his fee with his client, in order to get the job.

As the Hague tribunal's spokesperson, Jim Landale, told IWPR, "[The tribunal] has a responsibility in all areas of its work to demonstrate that the public funds given to it are spent responsibly and effectively."

Gregor Guy-Smith, the president of the Hague tribunal's Association for Defence Counsels, ADC, insists that the problems faced by defence lawyers are more fundamental. "There is a systemic problem because the defence is not part of the tribunal," he told IWPR.

It was not until September 2002, almost eight years after the Hague tribunal issued its first indictment, that the ADC was created to provide a "voice" for the defence.

Landale maintains that "the tribunal and especially the registry strongly advocated and worked towards the establishment of a bar association for defence counsel".

Yet the defence counsels have no voice at the United Nations in New York. Hague judges decided in July this year that the ADC would not be permitted to submit a separate defence update for inclusion in the tribunal's annual report.

However, it is during the court proceedings that the issue of equality between defence and prosecution really stands out.

In July this year, at the Oric trial, the "equality of arms" issue came under the spotlight. The chamber had ruled that the defence could only call 30

witnesses, rather than the 73 they had originally requested.

Oric's defence co-counsel, John Jones, argued that this would be a "mockery of justice", and that the defence's 73 witnesses would take less court time than the prosecution had taken over the presentation of their case.

However, Judge Carmel Agius stated firmly that "equality of arms" was not based on any empirical comparisons between the two parties.

"[It] cannot be measured by the same number of witnesses…or by the same time or the same number of hours," he said. "It is not qualified by numbers, Mr Jones, nowhere in the world."

The alleged discrepancies between the prosecution and defence come into sharp relief when it comes to obtaining evidence from parties outside the court – such as in October this year, when Dragoljub Ojdanic's defence lawyers made renewed attempts to get hold of intercepts and security information from NATO, Canada, the United States and the United Kingdom.

Peter Robinson, co-counsel for Ojdanic, told IWPR that the apparent reluctance to disclose was "definitely" to do with the fact that the intercepts were being requested by defence lawyers.

"These governments and countries regularly give intercepted information to the prosecution," he said.

"The defence are individuals with very little moral or political clout to persuade countries or governments. It is not a level playing field from the outset."

Within the Hague court, observers argue that it is up to judges to level that playing field.

In the Oric case, the appeals chamber overturned Agius' ruling, claiming that it would be "only fair" to allow the defence more time and witnesses.

And in November this year, the Ojdanic judges decided that the majority of the defence's submissions were valid. The chamber issued an order against the reluctant NATO states that the sources should be supplied.

By contrast with both the Hague and Arusha tribunals, the UN-backed Special Court for Sierra Leone, established nearly ten years later in 2002, has a defence office with an official figurehead, known as the Principal Defender, whose job is to "ensure the rights of the accused persons who appear before the court" and who "acts as a voice for the defence both inside and outside the court".

The current Principal Defender, Vincent Nmehielle, told IWPR that one of the "primary reasons" for the creation of a defence office was the apparent failure by the Hague and Rwanda tribunals to protect defence interests.

Nmehielle's predecessor, Simone Monasebian, who previously worked for the prosecution in Arusha, agrees.

She cites a memo sent by the special court's president, Geoffrey Robinson, which explicitly stated that the Principal Defender's post would "remedy the perceived shortcomings" of the other tribunals in respect of defence facilities.

Part of the remedy has been the way the newer court promotes the message that the defence plays an important role in establishing the guilt or innocence of an individual.

In the Balkans, says Human Rights Watch researcher Bogdan Ivanisovic, prejudices are deep-seated, adding that in Belgrade the public automatically assume that Bosniaks and Croats accused of crimes against ethnic Serbs are guilty.

"This conviction is most often not based on detailed knowledge of the charges; of the exact role of the accused in the relevant events; nor on following of the trial in The Hague," he told IWPR.

The Hague tribunal has an outreach programme which regularly organises events in the Dutch city and the Balkan region. Outreach co-ordinator, Liam McDowall, told IWPR that he had frequently invited the ADC to provide speakers for outreach activities, but with little success.

"[The ADC] rarely engage in these offers," he said.

Joeri Maas, senior ADC representatives, denied this, however, claiming that in the past two years "only once" had the ADC received an invitation from the outreach department to participate in their events.

In some cases, the lack of understanding about the role the defence plays can lead to problems with persuading witnesses to testify.

Aminatta N'Gum, a senior official at the Rwanda tribunal, says they have experienced such problems in Arusha. "We have had a couple of defence teams who've been to Rwanda to get witnesses who've come back with nothing," she said.

In Kigali, the Rwandan capital, there is widespread mistrust of the motives of defence lawyers, and a sense of grievance that so much money goes to defend "genocidaires".

Aloys Mutabingwa, special representative of the Rwandan government to the Arusha tribunal, told IWPR that although the government realised that defence was "part-and- parcel of the justice process" they were concerned about the "extravagance" of defence spending.

"If just a small portion of that money were to be used to help people dying of AIDS and living in abject poverty as a result of the [Rwandan] massacre, that would be better," he said.

At the Special Court of Sierra Leone, Nmehielle organises monthly publicity events, and is given the opportunity to discuss defence issues with civil society organisations, parliamentarians, military personnel and the police.

"I explain why there should be a defence, I tell the story of the defence irrespective of national or international opinion," he told IWPR.

However, even Nmehielle acknowledges that "[the public] see these accused people as animal, hooligans, and criminals – even human rights organisations see them in this way".

Appendix 2: International Humanitarian Law Documents

1. Hague Conventions page 52
2. Geneva Conventions page 53
3. Genocide Convention page 59
4. Rome Statute of the International Criminal Court page 60

1. Hague Conventions

There are many Hague conventions, relating in large part to the use of weapons such as explosive mines at sea, chemical and bacteriological weapons, and dumdum bullets.

The document that is probably most relevant to most war crimes trials is the fourth convention (of 1907) dealing with the laws and customs of war.

Some of its main points are set out below:

Convention (IV) Respecting the Laws and Customs of War on Land. Signed in The Hague, October 18, 1907.

Belligerents (nowadays termed "combatants")

Article 1. The laws, rights, and duties of war apply not only to armies, but also to militia and volunteer corps fulfilling the following conditions:

1. To be commanded by a person responsible for his subordinates;

2. To have a fixed distinctive emblem recognizable at a distance;

3. To carry arms openly; and

4. To conduct their operations in accordance with the laws and customs of war.

In countries where militia or volunteer corps constitute the army, or form part of it, they are included under the denomination "army."

Article 2. The inhabitants of a territory which has not been occupied, who, on the approach of the enemy, spontaneously take up arms to resist the invading troops without having had time to organize themselves in accordance with Article 1, shall be regarded as belligerents if they carry arms openly and if they respect the laws and customs of war.

Article 3. The armed forces of the belligerent parties may consist of combatants and non-combatants. In the case of capture by the enemy, both have a right to be treated as prisoners of war.

Prisoners of War

Article 4. Prisoners of war are in the power of the hostile Government, but not of the individuals or corps who capture them.

They must be humanely treated. All their personal belongings, except arms, horses, and military papers, remain their property.

Article 5. Prisoners of war may be interned in a town, fortress, camp, or other place, and bound not to go beyond certain fixed limits, but they cannot be confined except as in indispensable measure of safety and only while the circumstances which necessitate the measure continue to exist.

Article 6. The State may utilize the labour of prisoners of war according to their rank and aptitude, officers excepted. The tasks shall not be excessive and shall have no connection with the operations of the war. […]

Article 8. Prisoners of war shall be subject to the laws, regulations, and orders in force in the army of the State in whose power they are. Any act of insubordination justifies the adoption towards them of such measures of severity as may be considered necessary.

Escaped prisoners who are retaken before being able to rejoin their own army or before leaving the territory occupied by the army which captured them are liable to disciplinary punishment. Prisoners who, after succeeding in escaping, are again taken prisoners, are not liable to any punishment on account of the previous flight.

Article 9. Every prisoner of war is bound to give, if he is questioned on the subject, his true name and rank, and if he infringes this rule, he is liable to have the advantages given to prisoners of his class curtailed. […]

Article 13. Individuals who follow an army without directly belonging to it, such as newspaper correspondents and reporters, sutlers and contractors, who fall into the enemy's hands and whom the latter thinks expedient to detain, are entitled to be treated as prisoners of war, provided they are in possession of a certificate from the military authorities of the army which they were accompanying. [….]

Article 18. Prisoners of war shall enjoy complete liberty in the exercise of their religion, including attendance at the services of whatever church they may belong to, on the sole condition that they comply with the measures of order and police issued by the military authorities. [….]

Article 20. After the conclusion of peace, the repatriation of prisoners of war shall be carried out as quickly as possible.

Waging war

Article 22. The right of belligerents to adopt means of injuring the enemy is not unlimited.

Article 23. In addition to the prohibitions provided by special Conventions, it is especially forbidden –

(a) To employ poison or poisoned weapons;

(b) to kill or wound treacherously individuals belonging to the hostile nation or army;

(c) To kill or wound an enemy who, having laid down his arms, or having no longer means of defence, has surrendered at discretion; (d) To declare that no quarter will be given;

(e) To employ arms, projectiles, or material calculated to cause unnecessary suffering;

(f) To make improper use of a flag of truce, of the national flag or of the military insignia and uniform of the enemy, as well as the distinctive badges of the Geneva Convention;

(g) To destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war; (h) To declare abolished, suspended, or inadmissible in a court of law the rights and actions of the nationals of the hostile party. A belligerent is likewise forbidden to compel the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war.

Article 24. Ruses of war and the employment of measures necessary for obtaining information about the enemy and the country are considered permissible.

Article 25. The attack or bombardment, by whatever means, of towns, villages, dwellings, or buildings which are undefended is prohibited.

Article 26. The officer in command of an attacking force must, before commencing a bombardment, except in cases of assault, do all in his power to warn the authorities.

Article 27. In sieges and bombardments all necessary steps must be taken to spare, as far as possible, buildings dedicated to religion, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected, provided they are not being used at the time for military purposes.

It is the duty of the besieged to indicate the presence of such buildings or places by distinctive and visible signs, which shall be notified to the enemy beforehand.

Article 28. The pillage of a town or place, even when taken by assault, is prohibited.

Article 56. The property of municipalities, that of institutions dedicated to religion, charity and education, the arts and sciences, even when State property, shall be treated as private property.

All seizure of, destruction or wilful damage done to institutions of this character, historic monuments, works of art and science, is forbidden, and should be made the subject of legal proceedings.

2. Geneva Conventions

- Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. Geneva, 12 August 1949.
- Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea. Geneva, 12 August 1949.
- Convention (III) relative to the Treatment of Prisoners of War. Geneva, 12 August 1949.
- Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949.
- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977.
- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977.

The Four Geneva Conventions

Common Article 3, included in all four Geneva Conventions, extending coverage of the protections afforded in international conflicts to non-international armed conflicts.

Article 3. In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

(b) taking of hostages;

(c) outrages upon personal dignity, in particular humiliating and degrading treatment;

(d) the passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

(2) The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

Grave breaches

Convention III defines grave breaches in the following manner:

Art 129. …Each High Contracting Party shall take measures necessary for the suppression of all acts contrary to the provisions of the present Convention other than the grave breaches defined in the following Article.

In all circumstances, the accused persons shall benefit by safeguards of proper trial and defence, which shall not be less favourable than those provided by Article 105 and those following of the present Convention.

Art 130. Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, compelling a prisoner of war to serve in the forces of the hostile Power, or wilfully depriving a prisoner of war of the rights of fair and regular trial prescribed in this Convention.

Conventions I and II add:
… and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

Convention IV adds to the above:
….unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction.

Protection of the sick and wounded (Convention I)

Article 12. Members of the armed forces and other persons mentioned in the following Article, who are wounded or sick, shall be respected and protected in all circumstances.

They shall be treated humanely and cared for by the Party to the conflict in whose power they may be, without any adverse distinction founded on sex, race, nationality, religion, political opinions, or any other similar criteria. Any attempts upon their lives, or violence to their persons, shall be strictly prohibited; in particular, they shall not be murdered or exterminated, subjected to torture or to biological experiments; they shall not wilfully be left without medical assistance and care, nor shall conditions exposing them to contagion or infection be created.

Only urgent medical reasons will authorize priority in the order of treatment to be administered.

Women shall be treated with all consideration due to their sex. The Party to the conflict which is

compelled to abandon wounded or sick to the enemy shall, as far as military considerations permit, leave with them a part of its medical personnel and material to assist in their care.

Article 14. Subject to the provisions of Article 12, the wounded and sick of a belligerent who fall into enemy hands shall be prisoners of war, and the provisions of international law concerning prisoners of war shall apply to them.

Protection of armed forces at sea

Art 12. Members of the armed forces and other persons mentioned in the following Article, who are at sea and who are wounded, sick or shipwrecked, shall be respected and protected in all circumstances, it being understood that the term "shipwreck" means shipwreck from any cause and includes forced landings at sea by or from aircraft.

Definition of prisoners of war (Convention III)

Art 4. A. Prisoners of war, in the sense of the present Convention, are persons belonging to one of the following categories, who have fallen into the power of the enemy:

(1) Members of the armed forces of a Party to the conflict, as well as members of militias or volunteer corps forming part of such armed forces.

(2) Members of other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organized resistance movements, fulfil the following conditions:[
(a) that of being commanded by a person responsible for his subordinates;
(b) that of having a fixed distinctive sign recognizable at a distance;
(c) that of carrying arms openly;
(d) that of conducting their operations in accordance with the laws and customs of war.

(3) Members of regular armed forces who profess allegiance to a government or an authority not recognized by the Detaining Power.

(4) Persons who accompany the armed forces without actually being members thereof, such as civilian members of military aircraft crews, war correspondents, supply contractors, members of labour units or of services responsible for the welfare of the armed forces, provided that they have received authorization, from the armed forces which they accompany, who shall provide them for that purpose with an identity card similar to the annexed model.

(5) Members of crews, including masters, pilots and apprentices, of the merchant marine and the crews of civil aircraft of the Parties to the conflict, who do not benefit by more favourable treatment under any other provisions of international law.

(6) Inhabitants of a non-occupied territory, who on the approach of the enemy spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units, provided they carry arms openly and respect the laws and customs of war.

Treatment of prisoners of war (Convention III)

Art 12. Prisoners of war are in the hands of the enemy Power, but not of the individuals or military units who have captured them. Irrespective of the individual responsibilities that may exist, the Detaining Power is responsible for the treatment given them….ith.

Art 13. Prisoners of war must at all times be humanely treated. Any unlawful act or omission by the Detaining Power causing death or seriously endangering the health of a prisoner of war in its custody is prohibited, and will be regarded as a serious breach of the present Convention. In particular, no prisoner of war may be subjected to physical mutilation or to medical or scientific experiments of any kind which are not justified by the medical, dental or hospital treatment of the prisoner concerned and carried out in his interest.

Likewise, prisoners of war must at all times be protected, particularly against acts of violence or intimidation and against insults and public curiosity.

Measures of reprisal against prisoners of war are prohibited.

Art 14. Prisoners of war are entitled in all circumstances to respect for their persons and their honour.

Women shall be treated with all the regard due to their sex and shall in all cases benefit by treatment as favourable as that granted to men….

Art 16. Taking into consideration the provisions of the present Convention relating to rank and sex, and subject to any privileged treatment which may be accorded to them by reason of their state of health, age or professional qualifications, all prisoners of war shall be treated alike by the Detaining Power, without any adverse distinction based on race, nationality, religious belief or political opinions, or any other distinction founded on similar criteria.

Protection of civilians (Convention IV)

Article 27. Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity.

Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault.

Without prejudice to the provisions relating to their state of health, age and sex, all protected persons shall be treated with the same consideration by the Party to the conflict in whose power they are, without any adverse distinction based, in particular, on race, religion or political opinion.

However, the Parties to the conflict may take such measures of control and security in regard to protected persons as may be necessary as a result of the war.

Article 28. The presence of a protected person may not be used to render certain points or areas immune from military operations.

Article 29. The Party to the conflict in whose hands protected persons may be, is responsible for the treatment accorded to them by its agents, irrespective of any individual responsibility which may be incurred.

Article 31. No physical or moral coercion shall be exercised against protected persons, in particular to obtain information from them or from third parties.

Article 32. The High Contracting Parties specifically agree that each of them is prohibited from taking any measure of such a character as to cause the physical suffering or extermination of protected persons in their hands. This prohibition applies not only to murder, torture, corporal punishments, mutilation and medical or scientific experiments not necessitated by the medical treatment of a protected person, but also to any other measures of brutality whether applied by civilian or military agents.

Article 33. No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited.

Pillage is prohibited.

Reprisals against protected persons and their property are prohibited.

Article 34. The taking of hostages is prohibited.

Article 49. Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive. Nevertheless, the Occupying Power may undertake total or partial evacuation of a given area if the security of the population or imperative military reasons so demand. Such evacuations may not involve the displacement of protected persons outside the bounds of the occupied territory except when for material reasons it is impossible to avoid such displacement. Persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased.

Article 68. [....] The death penalty may not be pronounced against a protected person unless the attention of the court has been particularly called to the fact that since the accused is not a national of the Occupying Power, he is not bound to it by any duty of allegiance.

In any case, the death penalty may not be pronounced on a protected person who was under eighteen years of age at the time of the offence.

Article 71. No sentence shall be pronounced by the competent courts of the Occupying Power except after a regular trial.

THE TWO ADDITIONAL PROTOCOLS

Protocol I: Protection of Victims of International Armed Conflicts

Fundamental guarantees

Article 75…. The following acts are and shall remain prohibited at any time and in any place whatsoever, whether committed by civilian or by military agents:

(a) violence to the life, health, or physical or mental well-being of persons, in particular:
(i) murder;
(ii) torture of all kinds, whether physical or mental;
(iii) corporal punishment; and
(iv) mutilation;

(b) outrages upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault;
(c) the taking of hostages;
(d) collective punishments; and
(e) threats to commit any of the foregoing acts.

Grave breaches of Protocol 1

Article 85 …. the following acts shall be regarded as grave breaches of this Protocol, when committed wilfully, in violation of the relevant provisions of this Protocol, and causing death or serious injury to body or health:

(a) making the civilian population or individual civilians the object of attack;
(b) launching an indiscriminate attack affecting the civilian population or civilian objects in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects, as defined in Article 57, paragraph 2 (a)(iii);
(c) launching an attack against works or installations containing dangerous forces in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects, as defined in Article 57, paragraph 2 (a)(iii);
(d) making non-defended localities and demilitarized zones the object of attack;
(e) making a person the object of attack in the knowledge that he is hors de combat;
(f) the perfidious use, in violation of Article 37, of the distinctive emblem of the red cross, red crescent or red lion and sun or of other protective signs recognized by the Conventions or this Protocol.

4. In addition to the grave breaches defined in the preceding paragraphs and in the Conventions, the following shall be regarded as grave breaches of this Protocol, when committed wilfully and in violation of the Conventions or the Protocol:
(a) the transfer by the occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory, in violation of Article 49 of the Fourth Convention;
(b) unjustifiable delay in the repatriation of prisoners of war or civilians;

(c) practices of apartheid and other inhuman and degrading practices involving outrages upon personal dignity, based on racial discrimination;
(d) making the clearly-recognized historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples and to which special protection has been given by special arrangement, for example, within the framework of a competent international organization, the object of attack, causing as a result extensive destruction thereof, where there is no evidence of the violation by the adverse Party of Article 53, subparagraph (b), and when such historic monuments, works of art and places of worship are not located in the immediate proximity of military objectives;
(e) depriving a person protected by the Conventions or referred to in paragraph 2 of this Article of the rights of fair and regular trial.

5. Without prejudice to the application of the Conventions and of this Protocol, grave breaches of these instruments shall be regarded as war crimes.

Enemies no longer able to fight

Art 41. Safeguard of an enemy hors de combat

1. A person who is recognized or who, in the circumstances, should be recognized to be hors de combat shall not be made the object of attack.

2. A person is hors de combat if:
(a) he is in the power of an adverse Party;
(b) he clearly expresses an intention to surrender; or
(c) he has been rendered unconscious or is otherwise incapacitated by wounds or sickness, and therefore is incapable of defending himself;

provided that in any of these cases he abstains from any hostile act and does not attempt to escape.

3. When persons entitled to protection as prisoners of war have fallen into the power of an adverse Party under unusual conditions of combat which prevent their evacuation as provided for in Part III, Section I, of the Third Convention, they shall be released and all feasible precautions shall be taken to ensure their safety.

Article 42 – Occupants of aircraft

1. No person parachuting from an aircraft in distress shall be made the object of attack during his descent.

2. Upon reaching the ground in territory controlled by an adverse Party, a person who has parachuted from an aircraft in distress shall be given an opportunity to surrender before being made the object of attack, unless it is apparent that he is engaging in a hostile act.

Further definition of combatants and prisoners of war
Article 43. Armed forces
The armed forces of a Party to a conflict consist of all organized armed forces, groups and units which are under a command responsible to that Party for the conduct or its subordinates, even if that Party is represented by a government or an authority not recognized by an adverse Party. Such armed forces shall be subject to an internal disciplinary system which, inter alia, shall enforce compliance with the rules of international law applicable in armed conflict.

Members of the armed forces of a Party to a conflict (other than medical personnel and chaplains covered by Article 33 of the Third Convention) are combatants, that is to say, they have the right to participate directly in hostilities.
Whenever a Party to a conflict incorporates a paramilitary or armed law enforcement agency into its armed forces it shall so notify the other Parties to the conflict.
Article 44. Any combatant, as defined in Article 43, who falls into the power of an adverse Party shall be a prisoner of war.

Protection of civilians
Article 51.
The civilian population and individual civilians shall enjoy general protection against dangers arising from military operations….

2. The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.

3. Civilians shall enjoy the protection afforded by this section, unless and for such time as they take a direct part in hostilities.

4. Indiscriminate attacks are prohibited. Indiscriminate attacks are:
(a) those which are not directed at a specific military objective;
(b) those which employ a method or means of combat which cannot be directed at a specific military objective; or
(c) those which employ a method or means of combat the effects of which cannot be limited as required by this Protocol;

and consequently, in each such case, are of a nature to strike military objectives and civilians or civilian objects without distinction.

5. Among others, the following types of attacks are to be considered as indiscriminate:
(a) an attack by bombardment by any methods or means which treats as a single military objective a number of clearly separated and distinct military objectives located in a city, town, village or other area containing a similar concentration of civilians or civilian objects;

and

(b) an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.

6. Attacks against the civilian population or civilians by way of reprisals are prohibited.

7. The presence or movements of the civilian population or individual civilians shall not be used to render certain points or areas immune from military operations, in particular in attempts to shield military objectives from attacks or to shield, favour or impede military operations. The Parties to the conflict shall not direct the movement of the civilian population or individual civilians in order to attempt to shield military objectives from attacks or to shield military operations.

8. Any violation of these prohibitions shall not release the Parties to the conflict from their legal obligations with respect to the civilian population and civilians, including the obligation to take the precautionary measures provided for in Article 57.

Protection of homes, schools and places of worship

Article52.
1. Civilian objects shall not be the object of attack or of reprisals. Civilian objects are all objects which are not military objectives as defined in paragraph 2.
2. Attacks shall be limited strictly to military objectives. In so far as objects are concerned, military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.
3. In case of doubt whether an object which is normally dedicated to civilian purposes, such as a place of worship, a house or other dwelling or a school, is being used to make an effective contribution to military action, it shall be presumed not to be so used.

Article 53. Without prejudice to the provisions of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954, and of other relevant international instruments, it is prohibited:
(a) to commit any acts of hostility directed against the historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples;
(b) to use such objects in support of the military effort;
(c) to make such objects the object of reprisals.

Depriving civilians of the means of survival

Article 54. Protection of objects indispensable to the survival of the civilian population

1. Starvation of civilians as a method of warfare is prohibited.

2. It is prohibited to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such as food-stuffs, agricultural areas for the production of food-stuffs, crops, livestock, drinking water installations and supplies and irrigation works, for the specific purpose of denying them for their sustenance value to the civilian population or to the adverse Party, whatever the motive, whether in order to starve out civilians, to cause them to move away, or for any other motive.

3. The prohibitions in paragraph 2 shall not apply to such of the objects covered by it as are used by an adverse Party:
(a) as sustenance solely for the members of its armed forces; or
(b) if not as sustenance, then in direct support of military action, provided, however, that in no event shall actions against these objects be taken which may be expected to leave the civilian population with such inadequate food or water as to cause its starvation or force its movement.

4. These objects shall not be made the object of reprisals.

5. In recognition of the vital requirements of any Party to the conflict in the defence of its national territory against invasion, derogation from the prohibitions contained in paragraph 2 may be made by a Party to the conflict within such territory under its own control where required by imperative military necessity.

Refugees during conflict

Article 73. Refugees and stateless persons
Persons who, before the beginning of hostilities, were considered as stateless persons or refugees under the relevant international instruments accepted by the Parties concerned or under the national legislation of the State of refuge or State of residence shall be protected persons within the meaning of Parts I and III of the Fourth Convention, in all circumstances and without any adverse distinction.

Women and children

Article 76. Protection of women
1. Women shall be the object of special respect and shall be protected in particular against rape, forced prostitution and any other form of indecent assault.
2. Pregnant women and mothers having dependent infants who are arrested, detained or interned for reasons related to the armed conflict, shall have their cases considered with the utmost priority.
3. To the maximum extent feasible, the Parties to the conflict shall endeavour to avoid the pronouncement of the death penalty on pregnant women or mothers having dependent infants, for an offence related to the armed conflict. The death penalty for such offences shall not be executed on such women.

Article 77. Protection of children
1. Children shall be the object of special respect and shall be protected against any form of indecent assault. The Parties to the conflict shall provide them with the care and aid they require, whether because of their age or for any other reason.
2. The Parties to the conflict shall take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years the Parties to the conflict shall endeavour to give priority to those who are oldest.
3. If, in exceptional cases, despite the provisions of paragraph 2, children who have not attained the age of fifteen years take a direct part in hostilities and fall into the power of an adverse Party, they shall continue to benefit from the special protection accorded by this Article, whether or not they are prisoners of war.
4. If arrested, detained or interned for reasons related to the armed conflict, children shall be held in quarters separate from the quarters of adults, except where families are accommodated as family units as provided in Article 75, paragraph 5.
5. The death penalty for an offence related to the armed conflict shall not be executed on persons who had not attained the age of eighteen years at the time the offence was committed.

Accountability of commanders

Article 86. Failure to act
1. The High Contracting Parties and the Parties to the conflict shall repress grave breaches, and take measures necessary to suppress all other breaches, of the Conventions or of this Protocol which result from a failure to act when under a duty to do so.
2. The fact that a breach of the Conventions or of this Protocol was committed by a subordinate does not absolve his superiors from penal or disciplinary responsibility, as the case may be, if they knew, or had information which should have enabled them to conclude in the circumstances at the time, that he was committing or was going to commit such a breach and if they did not take all feasible measures within their power to prevent or repress the breach.

Article 87. Duty of commanders
1. The High Contracting Parties and the Parties to the conflict shall require military commanders, with respect to members of the armed forces under their command and other persons under their control, to prevent and, where necessary, to suppress and to report to competent authorities breaches of the Conventions and of this Protocol.
2. In order to prevent and suppress breaches, High Contracting Parties and Parties to the conflict shall require that, commensurate with their level of responsibility, commanders ensure that members of the armed forces under their command are aware of their obligations under the Conventions and this Protocol.
3. The High Contracting Parties and Parties to the conflict shall require any commander who is aware that subordinates or other persons under his control are going to commit or have committed a breach of the Conventions or of this Protocol, to initiate such steps as are necessary to prevent such violations of the Conventions or this Protocol, and, where appropriate, to initiate disciplinary or penal action against violators thereof.

Protocol II: Protection of Victims of Non-International Armed Conflicts

Application

[Protocol II] shall apply to all armed conflicts which are not covered by Article 1 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) and which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.

2. This Protocol shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts.

Guarantees of humane treatment

Article 4 Fundamental guarantees

1. All persons who do not take a direct part or who have ceased to take part in hostilities, whether or not their liberty has been restricted, are entitled to respect for their person, honour and convictions and religious practices. They shall in all circumstances be treated humanely, without any adverse distinction. It is prohibited to order that there shall be no survivors.

2. Without prejudice to the generality of the foregoing, the following acts against the persons referred to in paragraph I are and shall remain prohibited at any time and in any place whatsoever:
(a) violence to the life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;
(b) collective punishments;
(c) taking of hostages;
(d) acts of terrorism;
(e) outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form or indecent assault;
(f) slavery and the slave trade in all their forms;
(g) pillage;
(h) threats to commit any or the foregoing acts.

3. Children shall be provided with the care and aid they require, and in particular:
(a) they shall receive an education, including religious and moral education, in keeping with the wishes of their parents, or in the absence of parents, of those responsible for their care;
(b) all appropriate steps shall be taken to facilitate the reunion of families temporarily separated;
(c) children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities;
(d) the special protection provided by this Article to children who have not attained the age of fifteen years shall remain applicable to them if they take a direct part in hostilities despite the provisions of subparagraph (c) and are captured;
(e) measures shall be taken, if necessary, and whenever possible with the consent of their parents or persons who by law or custom are primarily responsible for their care, to remove children temporarily from the area in which hostilities are taking place to a safer area within the country and ensure that they are accompanied by persons responsible for their safety and well-being.

Article 5. Persons whose liberty has been restricted
1. In addition to the provisions of Article 4 the following provisions shall be respected as a minimum with regard to persons deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained;
(a) the wounded and the sick shall be treated in accordance with Article 7;
(b) the persons referred to in this paragraph shall, to the same extent as the local civilian population, be provided with food and drinking water and be afforded safeguards as regards health and hygiene and protection against the rigours of the climate and the dangers of the armed conflict;

(c) they shall be allowed to receive individual or collective relief;
(d) they shall be allowed to practise their religion and, if requested and appropriate, to receive spiritual assistance from persons, such as chaplains, performing religious functions;
(e) they shall, if made to work, have the benefit of working conditions and safeguards similar to those enjoyed by the local civilian population.

Prosecutions arising from conflict

Article 6. Penal prosecutions
1. This Article applies to the prosecution and punishment of criminal offences related to the armed conflict.
2. No sentence shall be passed and no penalty shall be executed on a person found guilty of an offence except pursuant to a conviction pronounced by a court offering the essential guarantees of independence and impartiality.
In particular:
(a) the procedure shall provide for an accused to be informed without delay of the particulars of the offence alleged against him and shall afford the accused before and during his trial all necessary rights and means of defence;
(b) no one shall be convicted of an offence except on the basis of individual penal responsibility;
(c) no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under the law, at the time when it was committed; nor shall a heavier penalty be imposed than that which was applicable at the time when the criminal offence was committed; if, after the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby;
(d) anyone charged with an offence is presumed innocent until proved guilty according to law;
(e) anyone charged with an offence shall have the right to be tried in his presence;
(f) no one shall be compelled to testify against himself or to confess guilt.

3. A convicted person shall be advised on conviction of his judicial and other remedies and of the time-limits within which they may be exercised.

4. The death penalty shall not be pronounced on persons who were under the age of eighteen years at the time of the offence and shall not be carried out on pregnant women or mothers of young children.

5. At the end of hostilities, the authorities in power shall endeavour to grant the broadest possible amnesty to persons who have participated in the armed conflict, or those deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained.

Wounded and sick persons

Article 7
1. All the wounded, sick and shipwrecked, whether or not they have taken part in the armed conflict, shall be respected and protected.

Protections for medical workers

Article 9. Protection of medical and religious personnel
1. Medical and religious personnel shall be respected and protected and shall be granted all available help for the performance of their duties. They shall not be compelled to carry out tasks which are not compatible with their humanitarian mission.[…]

Article 11. Protection of medical units and transports
1. Medical units and transports shall be respected and protected at all times and shall not be the object of attack.
2. The protection to which medical units and transports are entitled shall not cease unless they are used to commit hostile acts, outside their humanitarian function. Protection may, however, cease only after a warning has been given, setting, whenever appropriate, a reasonable time-limit, and after such warning has remained unheeded.

Article 12. Under the direction of the competent authority concerned, the distinctive emblem of the red cross, red crescent or red lion and sun on a white ground shall be displayed by medical and religious personnel and medical units, and on medical transports. It shall be respected in all circumstances. It shall not be used improperly.

Civilians

Art 13. Protection of the civilian population
1. The civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations. To give effect to this protection, the following rules shall be observed in all circumstances.
2. The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.
3. Civilians shall enjoy the protection afforded by this part, unless and for such time as they take a direct part in hostilities.

Protection of buildings and other sites

Art 14. Protection of objects indispensable to the survival of the civilian population
Starvation of civilians as a method of combat is prohibited. It is therefore prohibited to attack, destroy, remove or render useless for that purpose, objects indispensable to the survival of the civilian population such as food-stuffs, agricultural areas for the production of food-stuffs, crops, livestock, drinking water installations and supplies and irrigation works.

Art 15. Protection of works and installations containing dangerous forces
Works or installations containing dangerous forces, namely dams, dykes and nuclear electrical generating stations, shall not be made the object of attack, even where these objects are military objectives, if such attack may cause the release of dangerous forces and consequent severe losses among the civilian population.

Article 16. Protection of cultural objects and of places of worship
Without prejudice to the provisions of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954, it is prohibited to commit any acts of hostility directed against historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples, and to use them in support of the military effort.

Forced displacement

Article 17
1. The displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand. Should such displacements have to be carried out, all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition.
2. Civilians shall not be compelled to leave their own territory for reasons connected with the conflict.

3. Genocide Convention

Convention on the Prevention and Punishment of the Crime of Genocide

Adopted by Resolution 260 (III) A of the U.N. General Assembly on 9 December 1948.

Entry into force: 12 January 1951.

The Contracting Parties,

Having considered the declaration made by the General Assembly of the United Nations in its resolution 96 (I) dated 11 December 1946 that genocide is a crime under international law, contrary to the spirit and aims of the United Nations and condemned by the civilized world,

Recognizing that at all periods of history genocide has inflicted great losses on humanity, and

Being convinced that, in order to liberate mankind from such an odious scourge, international co-operation is required,

Hereby agree as hereinafter provided:

Article I: The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.

Article II: In the present Convention, 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.

Article III: 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 IV: Persons committing genocide or any of the other acts enumerated in article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.

Article V: The Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention, and, in particular, to provide effective penalties for persons guilty of genocide or any of the other acts enumerated in article III.

Article VI: Persons charged with genocide or any of the other acts enumerated in article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction.

Article VII: Genocide and the other acts enumerated in article III shall not be considered as political crimes for the purpose of extradition.

The Contracting Parties pledge themselves in such cases to grant extradition in accordance with their laws and treaties in force.

Article VIII: Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in article III.

Article IX: Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.

Article X: The present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall bear the date of 9 December 1948.

Article XI: The present Convention shall be open until 31 December 1949 for signature on behalf of any Member of the United Nations and of any nonmember State to which an invitation to sign has been addressed by the General Assembly.

The present Convention shall be ratified, and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

After 1 January 1950, the present Convention may be acceded to on behalf of any Member of the United Nations and of any non-member State which has received an invitation as aforesaid. Instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article XII: Any Contracting Party may at any time, by notification addressed to the Secretary-General of the United Nations, extend the application of the present Convention to all or any of the territories for the conduct of whose foreign relations that Contracting Party is responsible.

Article XIII: On the day when the first twenty instruments of ratification or accession have been deposited, the Secretary-General shall draw up a proces-verbal and transmit a copy thereof to each Member of the United Nations and to each of the non-member States contemplated in article XI.

The present Convention shall come into force on the ninetieth day following the date of deposit of the twentieth instrument of ratification or accession.

Any ratification or accession effected, subsequent to the latter date shall become effective on the ninetieth day following the deposit of the instrument of ratification or accession.

Article XIV: The present Convention shall remain in effect for a period of ten years as from the date of its coming into force.

It shall thereafter remain in force for successive periods of five years for such Contracting Parties as have not denounced it at least six months before the expiration of the current period.

Denunciation shall be effected by a written notification addressed to the Secretary-General of the United Nations.

Article XV: If, as a result of denunciations, the number of Parties to the present Convention should become less than sixteen, the Convention shall cease to be in force as from the date on which the last of these denunciations shall become effective.

Article XVI: A request for the revision of the present Convention may be made at any time by any Contracting Party by means of a notification in writing addressed to the Secretary-General.

The General Assembly shall decide upon the steps, if any, to be taken in respect of such request.

Article XVII: The Secretary-General of the United Nations shall notify all Members of the United Nations and the non-member States contemplated in article XI of the following:

(a) Signatures, ratifications and accessions received in accordance with article XI;
(b) Notifications received in accordance with article XII;

(c) The date upon which the present Convention comes into force in accordance with article XIII;
(d) Denunciations received in accordance with article XIV;
(e) The abrogation of the Convention in accordance with article XV;
(f) Notifications received in accordance with article XVI.

Article XVIII: The original of the present Convention shall be deposited in the archives of the United Nations.

A certified copy of the Convention shall be transmitted to each Member of the United Nations and to each of the non-member States contemplated in article XI.

Article XIX: The present Convention shall be registered by the Secretary-General of the United Nations on the date of its coming into force.

4. Rome Statute of the International Criminal Court

ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT

[signed July 17, 1998]

The ICC

An International Criminal Court ("the Court") is hereby established. It shall be a permanent institution and shall have the power to exercise its jurisdiction over persons for the most serious crimes of international concern, as referred to in this Statute, and shall be complementary to national criminal jurisdictions. The jurisdiction and functioning of the Court shall be governed by the provisions of this Statute.

Jurisdiction

Article 5 Crimes within the jurisdiction of the Court
1. The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes:
(a) The crime of genocide;
(b) Crimes against humanity;
(c) War crimes;
(d) The crime of aggression.

2. The Court shall exercise jurisdiction over the crime of aggression once a provision is adopted in accordance with articles 121 and 123 defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime. Such a provision shall be consistent with the relevant provisions of the Charter of the United Nations.

Article 6 Genocide
For the purpose of this Statute, "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.

Article 7 Crimes against humanity
1. For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:
(a) Murder;
(b) Extermination;
(c) Enslavement;
(d) Deportation or forcible transfer of population;
(e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
(f) Torture;
(g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
(h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
(i) Enforced disappearance of persons;
(j) The crime of apartheid;
(k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

2. For the purpose of paragraph 1:
(a) "Attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;
(b) "Extermination" includes the intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;
(c) "Enslavement" means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;
(d) "Deportation or forcible transfer of population" means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;
(e) "Torture" means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;
(f) "Forced pregnancy" means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy;
(g) "Persecution" means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;
(h) "The crime of apartheid" means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;
(i) "Enforced disappearance of persons" means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

3. For the purpose of this Statute, it is understood that the term "gender" refers to the two sexes, male and female, within the context of society. The term "gender" does not indicate any meaning different from the above.

Article 8 War crimes
1. The Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes.

2. For the purpose of this Statute, "war crimes" means:
(a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:
(i) Wilful killing;
(ii) Torture or inhuman treatment, including biological experiments;
(iii) Wilfully causing great suffering, or serious injury to body or health;
(iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
(v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;
(vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;
(vii) Unlawful deportation or transfer or unlawful confinement;
(viii) Taking of hostages.

(b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:
(i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
(ii) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;
(iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
(iv) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;
(v) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;
(vi) Killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion;
(vii) Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;
(viii) The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;
(ix) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
(x) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
(xi) Killing or wounding treacherously individuals belonging to the hostile nation or army;
(xii) Declaring that no quarter will be given;
(xiii) Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;
(xiv) Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;
(xv) Compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;
(xvi) Pillaging a town or place, even when taken by assault;
(xvii) Employing poison or poisoned weapons;
(xviii) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;
(xix) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;
(xx) Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to this Statute, by an amendment in accordance with the relevant provisions set forth in articles 121 and 123;
(xxi) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
(xxii) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions;
(xxiii) Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;
(xxiv) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
(xxv) Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions;
(xxvi) Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.

(c) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause:
(i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
(ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
(iii) Taking of hostages;
(iv) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.

(d) Paragraph 2 (c) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.

(e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:
(i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
(ii) Intentionally directing attacks against buildings, material, medical

units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
(iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
(iv) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
(v) Pillaging a town or place, even when taken by assault;
(vi) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions;
(vii) Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;
(viii) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;
(ix) Killing or wounding treacherously a combatant adversary;
(x) Declaring that no quarter will be given;
(xi) Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
(xii) Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict;

(f) Paragraph 2 (e) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups.

3. Nothing in paragraph 2 (c) and (e) shall affect the responsibility of a Government to maintain or re-establish law and order in the State or to defend the unity and territorial integrity of the State, by all legitimate means.

Article 21 Applicable law

1. The Court shall apply:
(a) In the first place, this Statute, Elements of Crimes and its Rules of Procedure and Evidence;
(b) In the second place, where appropriate, applicable treaties and the principles and rules of international law, including the established principles of the international law of armed conflict;
(c) Failing that, general principles of law derived by the Court from national laws of legal systems of the world including, as appropriate, the national laws of States that would normally exercise jurisdiction over the crime, provided that those principles are not inconsistent with this Statute and with international law and internationally recognized norms and standards.

2. The Court may apply principles and rules of law as interpreted in its previous decisions.

3. The application and interpretation of law pursuant to this article must be consistent with internationally recognized human rights, and be without any adverse distinction founded on grounds such as gender as defined in article 7, paragraph 3, age, race, colour, language, religion or belief, political or other opinion, national, ethnic or social origin, wealth, birth or other status.

Accountability of individuals before the ICC

Article 25 Individual criminal responsibility
1. The Court shall have jurisdiction over natural persons pursuant to this Statute.

2. A person who commits a crime within the jurisdiction of the Court shall be individually responsible and liable for punishment in accordance with this Statute.

3. In accordance with this Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person:
(a) Commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible;
(b) Orders, solicits or induces the commission of such a crime which in fact occurs or is attempted;
(c) For the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission;
(d) In any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:
(i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court; or
(ii) Be made in the knowledge of the intention of the group to commit the crime;
(e) In respect of the crime of genocide, directly and publicly incites others to commit genocide;
(f) Attempts to commit such a crime by taking action that commences its execution by means of a substantial step, but the crime does not occur because of circumstances independent of the person's intentions. However, a person who abandons the effort to commit the crime or otherwise prevents the completion of the crime shall not be liable for punishment under this Statute for the attempt to commit that crime if that person completely and voluntarily gave up the criminal purpose.

4. No provision in this Statute relating to individual criminal responsibility shall affect the responsibility of States under international law.

Article 26 Exclusion of jurisdiction over persons under eighteen

The Court shall have no jurisdiction over any person who was under the age of 18 at the time of the alleged commission of a crime.

Article 27 Irrelevance of official capacity

1. This Statute shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or Government, a member of a Government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Statute, nor shall it, in and of itself, constitute a ground for reduction of sentence.

2. Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person.

Article 28 Responsibility of commanders and other superiors
In addition to other grounds of criminal responsibility under this Statute for crimes within the jurisdiction of the Court:
(a) A military commander or person effectively acting as a military commander shall be criminally responsible for crimes within the

jurisdiction of the Court committed by forces under his or her effective command and control, or effective authority and control as the case may be, as a result of his or her failure to exercise control properly over such forces, where:
(i) That military commander or person either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes; and
(ii) That military commander or person failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

(b) With respect to superior and subordinate relationships not described in paragraph (a), a superior shall be criminally responsible for crimes within the jurisdiction of the Court committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates, where:
(i) The superior either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such crimes;
(ii) The crimes concerned activities that were within the effective responsibility and control of the superior; and
(iii) The superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

Article 33 Superior orders and prescription of law
1. The fact that a crime within the jurisdiction of the Court has been committed by a person pursuant to an order of a Government or of a superior, whether military or civilian, shall not relieve that person of criminal responsibility unless:
(a) The person was under a legal obligation to obey orders of the Government or the superior in question;
(b) The person did not know that the order was unlawful; and
(c) The order was not manifestly unlawful.

2. For the purposes of this article, orders to commit genocide or crimes against humanity are manifestly unlawful.

Appendix 3: Information resources and contacts

Human rights and war crimes reporting

- **Amnesty International**, a London-based human rights organisation. www.amnesty.org
- **Coalition for an International Court**, an umbrella group of more than 2,000 non-governmental organisations that have long campaigned for an effective, independent and permanent international court. www.iccnow.org
- **Crimes of War**: a collaborative effort by journalists, lawyers and scholars to raise public awareness of the laws of war and their application to situations of conflict. The book Crimes of War, available on their website, provides a useful A-Z of war crimes legal issues. http://www.crimesofwar.org
- **Human Rights Watch**, which investigates human rights violations around the world. www.hrw.org
- **International Center for Transitional Justice**, an organisation that helps countries pursuing accountability for past human rights abuses. www.ictj.org
- **Human Rights First**, based in New York City and Washington DC, has many experts in international humanitarian law. www.humanrightsfirst.org
- **The Hirondelle Foundation** has a news agency in Arusha, Tanzania that has covered the proceedings of the International Criminal Tribunal for Rwanda (ICTR) as well national trials and the Gacaca courts. www.hirondelle.org/arusha.nsf
- **Internews**, a non-profit organisation working to improve access to information by fostering independent media and promoting open communications policies. Its "The Justice After Genocide" programme distributes newsreels on the justice process in Rwanda. www.internews.org/regions/africa/justice_rwanda_overview.htm http://www.internews.org.rw/
- **IWPR Tribunal Update**, weekly reports on the war crimes proceedings at the ICTY, published by the Institute for War and Peace Reporting. www.iwpr.net
- **The War Crimes Studies Center** at the University of California, Berkeley, supports a scholarship to further the understanding of war crimes and has a monthly monitoring report on the Sierra Leone Special Court. http://ist-socrates.berkeley.edu/~warcrime/

Journalism

- **Reporting for Change: A Handbook for Local Journalists in Crisis Areas**. IWPR's training manual, available as a book or as pdf files at http://www.iwpr.net/index.php?apc_state=henh&s=o&o=special_index1.html

Appendix 4: Answers to Exercise Questions

Chapter 1

1) Showed the world what had been done and made it impossible to deny; acknowledged the suffering of those who had survived the Holocaust; and strengthened the rule of law internationally, by acknowledging the existence of crimes against humanity.

2) Crimes against peace; war crimes; and crimes against humanity.

3) Made the public aware of what happened in the courtroom and brought evidence – including footage of the Nazi death camps, testimony of survivors and thousands of documents detailing crimes – into the public consciousness.

4) The ICTY.

Chapter 2

1. By UN Security Council mandate.

2. To hold accountable those responsible for the slaughter of some 800,000 Tutsis and moderate Hutus in 1994.

3. Because it was set up with the backing of the UN Security Council.

4. By international treaty, meaning states had to agree to be a part of it.

5. Because the ICC only has jurisdiction over crimes committed after July 1, 2002, when it went into force.

6. A hybrid court, with both Sierra Leonean and international staff, judges, prosecutors and defence lawyers.

7. Hybrid courts are generally set up in the country where the crimes took place and thus have more resonance on the ground. Also, because they employ both local and international prosecutors, judges, court officers and defence attorneys, they contribute substantially towards rebuilding local justice systems and the rule of law.

Chapter 3

1) Get press credentials through the press office.

2) The court may hide the witness from view, distort their voice and/or ask all spectators to leave the courtroom while they give testimony.

3) In general, no. Lawyers instruct witnesses not to speak to journalists.

Chapter 6

1) Impartiality, accuracy and fairness.

2) Truth. Journalists can make things worse by allowing emotions to affect the way they report.

3) Ensure you have reliable local information; be calm and prepared; never place the story above your own personal safety.

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