

# **THE YUGOSLAVIA AND RWANDA TRIBUNALS AND THE INTERNATIONAL CRIMINAL COURT : SIMILARITIES AND DIFFERENCES**

- 1. Creation and legal grounds**
- 2. Jurisdiction**
- 3. Procedure**

## 1. Creation and Legal ground

- ICTY : S/Res. 808 and 827 (22 February and 25 May 1993)
- ICTR : S/Res. 955 (8 November 1994)
  - **Vertical**, authoritative creation, by the Security Council (SC) : subsidiary organs and decisions of the SC (Charter, Art. 29 and 25) ← “threat to international peace and security”
  - **Obligation to co-operate** with the ICTs for all member States of the UN : execution of summons and arrest warrants, transfer of suspects, removal of the case from the domestic courts, transmission of information, evidence, etc (ICTs’ Statutes, Art. 29/28)
  - **Primacy** of the ICTs over the domestic courts (ICTs’ Statutes, Art. 9/8)

- ICC : a conventional status (Rome, 17 July 1998)
  - **horizontal**, consensual creation – autonomous international organisation under the authority of the States parties (Statute, Art. 4 and 112)
  - obligation of co-operation with the ICC **limited** to the States parties (Statute, Art. 126)
  - **Complementarity** of the ICC with regard to the States parties (Statute, Preamble, 10 para., Art. 1 and 17)

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## 2. Jurisdiction

- *Ratione materiae* jurisdiction
  - ICTY :
    - Serious breaches to the 1949 Geneva Conventions (GC) (Statute, Art. 2)
    - Violations of the laws and customs of war (Statute, Art. 3)
    - Genocide (Statute, Art. 4)
    - Crimes against humanity (Statute, Art. 5)
  - ICTR :
    - Genocide (Statute, Art. 2)
    - Crimes against humanity (Statute, Art. 3)
    - Violations of common Art. 3 to the 1949 GC + 2<sup>nd</sup> 1977 Additional Protocol (Statute, Art. 4)

- *Ratione personae* and *ratione loci* jurisdiction :
  - ICTs : crimes committed by any natural person in the former Yugoslavia and in Rwanda (Statutes, Art. 1)
  - ICC : crimes committed on the territory of States **parties** or by nationals of States **parties** (Statute, Art. 12) and crimes committed in situations referred to by the SC (Art. 13, b) → ICC = ICT in stand by

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### 3. Procedure

- Trial Chambers (9 Judges, ICT; 13 Judges, ICC) and Chamber of Appeals (5 Judges, ICT and ICC) (ICTs' Statutes, Art. 11-12/10-11; ICC Statute, Art. 36-39)
- ICTs' Judges elected by the UNGA for a term of 4 years with a possibility of re-election (Art. 13/12; ICC Judges elected by States parties for one term of 9 years; no re-election (Art. 36 § 9);
- Prosecutor's discretion for prosecution (ICTs, Art. 18/17; ICC, Art. 15) except deferral decided by the SC (ICC, Art. 16 and S/Res. 1422, 12 July 2002)
- Anglo-Saxon procedure (guilty/non guilty), mainly accusatory and oral (ICTs, Art. 20/19; ICC, Art. 64-65)
- Respect of the rules of fair trial (*cfr.* 1966 Covenant, Art. 14) (ICTs, Art. 21/20; ICC, Art. 67)
- No trial *in absentia* : ICTs (*cfr.* however, Rules, Art. 61); restricted possibility in the ICC (Art. 63, 76, 83 § 5)
- *Non bis in idem* rule (ICTs, Art. 10/9; ICC, Art. 20)

- No death penalty (ICTs, Art. 24/23; ICC, Art. 77)
- No reparations in the ICTs; reparations in the ICC (ICTs, Art. 24/23; ICC, Art. 75)
- Imprisonment penalties (recourse to the general practice in the former Yugoslavia and Rwanda) (ICTs, Art. 24/23), fines and forfeiture or proceeds derived from the crime (ICC, Art. 77)
- Obligation of States to co-operate with the ICTs/ICC (ICTs, Art. 29/28; ICC, Art. 86-87)
- Primacy of the ICTs on municipal courts/no primacy of the ICC (ICTs, Art. 9/8; ICC, Art. 17-20)

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## Conclusions

- Drawbacks of the ICTs/ICC
  - no private parties (partial exception in the ICC)
  - justification for the passivity of the States to apply (universal) jurisdiction
  - expensive justice
  - two-tier justice system
  
- Drawbacks of the ICC
  - Conventional status
  - No primacy of the ICC
  - Submission to the will of the SC

- Advantages of the ICTs/ICC
  - Rationalisation of justice
  - Remedy to the flaws in criminal justice
  - Possibility of pressure on States
  - Strengthening some universal values
  - Neutrality and independence of justice
  - Exemplarity of the exclusion of the death penalty
  - Fight against revisionism