

SYMPOSIUM ON THE INTERNATIONAL CRIMINAL TRIBUNALS FOR THE FORMER YUGOSLAVIA AND RWANDA

EDITORS' INTRODUCTION

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The Nuremberg and Tokyo trials following World War II offered the hope that the international community would begin to bring to justice on a regular basis those responsible for atrocity crimes—genocide, crimes against humanity, and war crimes—committed in wartime, or, for some such crimes, even in peacetime.¹ That hope was not realized for many decades. Widespread atrocities were committed throughout the Cold War period in Korea, China, Vietnam, Cambodia, Bangladesh, Biafra, Central America, Iran and Iraq, southern Africa, and elsewhere, but no serious international effort was made to prosecute those responsible.

In part, this reticence reflected the deep divisions within the Cold War world, which often put the most powerful actors on opposite sides of such conflicts and which often made international action through the UN Security Council or other international organs very difficult. In part, it reflected the absence of an institutional means for international prosecution, including codification of the relevant and properly defined substantive crimes at the national or international level. It also may have expressed either a reluctance in certain quarters to set precedents for the prosecution of national political and military leaders or a sense that such prosecutions would be futile or might impede political solutions to the conflict in question.

All this changed with the onset of the Yugoslav conflict, and shortly thereafter with the Rwandan genocide. The end of the Cold War made it much more likely that the most powerful states might act in concert rather than in opposition, and, in particular, the new era freed the Security Council from the constant obstruction of the veto, at least for a while, making it possible for the international community to use the Security Council's extensive authority in ways that had previously been politically impossible.

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¹ These trials were conducted by the 1945 International Military Tribunal at Nuremberg and the 1946 International Military Tribunal for the Far East (Tokyo). *See, e.g.*, 1 VIRGINIA MORRIS & MICHAEL P. SCHARF, AN INSIDER'S GUIDE TO THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA 2–10 (1995). For a description of “atrocity crimes,” see DAVID SCHEFFER, ALL THE MISSING SOULS: A PERSONAL HISTORY OF THE WAR CRIMES TRIBUNALS 428–37 (2012).

As a result, the Security Council acted in May 1993 to create the International Criminal Tribunal for the Former Yugoslavia (ICTY),² and in November 1994 to create the International Criminal Tribunal for Rwanda (ICTR).³ And now, more than twenty years have passed since their creation, with only a handful of trials and appeals to be completed. With a goal of “maintain[ing] the legacy of both institutions,” the Security Council established the Mechanism for International Criminal Tribunals to conclude judicial activities, enforce sentences, protect victims and witnesses, and manage archives.⁴ It is therefore an opportune moment to revisit the creation, operation, and jurisprudence of the ICTY and the ICTR, and to make some assessment of their influence.

By looking back at the ICTY and the ICTR, as well as their impact on the body of international criminal law and the states in which the crimes were committed, this symposium illuminates the legal and political dimensions of the creation and the work of these Tribunals. The articles consider the ICTY and ICTR from their beginning to (imminent) end and seek to assess the effect that decisions by and about the Tribunals had on the development and the practical reach of international criminal law. We have no doubt that the past will continue to guide us into the future as law confronts inexhaustible evil in a turbulent world.

² SC Res. 827 (May 25, 1993).

³ SC Res. 955 (Nov. 8, 1994).

⁴ United Nations Mechanism for International Criminal Tribunals, About the MICT (undated), at <http://www.unmict.org/en/about>.