

2.1.4 Courts and tribunals

International courts and tribunals are organisations that assist in creating, maintaining and solving disputes over world order agreements. Such institutions include:

- The International Court of Justice (ICJ) – the UN’s judicial organ
- The International Criminal Court (ICC) – the permanent, independent criminal court
- Other international tribunals such as war crimes tribunals including ICTY, ICTR and ECCC
- Regional courts such as the European Court of Justice, European Court of Human Rights, the Inter-American Court of Human Rights and the African Court on Human and Peoples’ Rights

Courts and tribunals such as these utilise legal processes in order to hear matters pertaining to allegations of breaches of world order agreements and breaches of international law. The ‘world court’ or main judicial organ of the United Nations is the International Court of Justice (ICJ). To date the court has heard 152 matters. The ICJ does not allow matters between individuals and the nation to be heard – it is a court that settles disputes between nation States only.

W-Info 8 International Court of Justice (ICJ)

- Located in The Hague, Netherlands
- Replaced the Permanent Court of International Justice (PCIJ) in 1946
- Interprets treaties
- One role is to provide legal advice on international legal matters: advisory opinions on legal questions. This is in Article 65(1) of the Statute of the ICJ.
- Has 15 judges on 9 year terms, with elections of one third every 3 years. Judges of the nationality of the parties having the dispute are also appointed which makes the independence of the judiciary questionable at times
- Its main role is to settle international disputes. However, decisions made by the Court are not binding and cannot be enforced. Only 66 of the 193 UN member States recognise the compulsory jurisdiction of the Court.
- Some States withdraw their recognition of the compulsory jurisdiction of the Court when it does not suit them – for example, Australia said it did not recognise the jurisdiction of the Court with respect to maritime law and East Timor over access to the Timor Gap oil reserves.

World in Order 9 Serbia and Kosovo

Kosovo declared its independence from Serbia on February 17, 2008. In its declaration of independence, Kosovo committed to fulfilling its obligations under the Ahtisaari Plan and embraced multi-ethnicity as a fundamental principle of good governance, welcoming a period of international supervision. The United States formally recognized Kosovo as a sovereign and independent State on February 18, 2008. As of October 2011, over 80 countries had recognised Kosovo's independence, including 22 of 27 EU member states, all of its neighbors (except Serbia), and other states from the Americas, Africa, and Asia.

Source: <http://www.state.gov/r/pa/ei/bgn/100931.htm>

Serbia went before the United Nations to negotiate over the future of Kosovo, its southern breakaway province that has declared independence and been recognised by a number of countries. Serbia is planning its next steps after it was clearly taken aback with the decision in mid-2010 by the top United Nations (UN) legal body, the International Court of Justice (ICJ) that the unilateral declaration of independence of Kosovo from Serbia back in 2008 was within international law.

"The court considers that general international law contains no applicable prohibition of declaration of independence," Judge Hisashi Owada, president of the ICJ, said in his ruling. "Accordingly it concludes that the declaration of independence of the 17th of February 2008 did not violate general international law." The decision is non-binding and only an advisory opinion.

"This was a very hard decision for Serbia", Serbian President Boris Tadic told reporters. "But Serbia will continue its battle for the status of Kosovo with peaceful, diplomatic means." He added: "Serbia will never recognise the independence of Kosovo."

The ICJ ruled that Serbia lost its jurisdiction over Kosovo with the introduction of the UN administration. The UN administration was introduced after 11 weeks of North Atlantic Treaty Organisation (NATO) bombing of Serbia due to Belgrade's repression against two million Kosovo Albanians.

Source: V P Zimonjic at
<http://www.ipsnews.net/news.asp?idnews=52523>

W-Info 9 International Criminal Court (ICC)

The idea of the ICC was first raised in 1919. After WWII there were two war crimes tribunals – one in Nuremburg and another in Tokyo. In these tribunals German and Japanese military leaders were convicted of crimes against humanity. In 1948 there was a General Assembly resolution that highlighted the need for an international criminal court to prosecute jus cogens crimes such as genocide, crimes against humanity and war crimes. In 1998 the Rome Statute was drafted which established that the ICC would come into force in July 2002.

The Court entered into force in July 2002 with jurisdiction to prosecute the following crimes:

- Crimes against humanity (including genocide, enslavement, torture, rape, forced pregnancy, enforced disappearances and prosecution on political, racial, ethnic or religious grounds)
- War crimes
- Genocide
- Crimes of aggression

It does not have the jurisdiction to prosecute drug trafficking or terrorism offences.

The International Criminal Court (ICC), governed by the Rome Statute, is the first permanent, treaty based, international criminal court established to help end impunity for the perpetrators of the most serious crimes of concern to the international community. The ICC is an independent international organisation, and is not part of the United Nations system. Its seat is at The Hague in the Netherlands. Although the Court's expenses are funded primarily by States Parties, it also receives voluntary contributions from governments, international organisations, individuals, corporations and other entities.

Source: <http://www.icc-cpi.int/Menus/ICC/About+the+Court>; accessed on 04.09.09

Will the ICC work...??

As of 1 July 2012, 121 countries are State Parties to the Rome Statute. Of these, 33 are from Africa, 18 from Asia-Pacific, 18 from Eastern Europe, 26 from Latin America and the Caribbean and 25 from Western Europe and North America.

However the USA is not one of them, nor is Russia (signed the Treaty but has not ratified it), China, India, Iran or Israel. The US government refused to sign the Treaty into law because its soldiers and peacekeepers could be tried for war crimes. It believes that this would undermine US sovereignty. UN soldiers and officials are immune from local prosecution. If they commit crimes they are supposed to be repatriated and tried by their own countries (as has happened in the case of torture perpetrated by US soldiers on Iraqi prisoners). They would be subject to the ICC's jurisdiction only if they committed widespread and systematic war crimes or crimes against civilians. The US has persuaded 24 nations not to ratify the Treaty even going so far as threatening them with economic sanctions and loss of military aid. The ICC is independent of the UN and is currently hearing matters pertaining to conflicts in West Africa.

Adapted from: Source: http://www.icc-cpi.int/Menus/ASP/states+parties/States+Parties+_Chronological+list.htm and B. Clarke, *International Law*, Lawbook Co, 2003, *Time Magazine*, July 8, 2002 and *The Economist* p46, 15/03/03

Other international tribunals

These include so called '*ad hoc*' tribunals, which are convened by the UN to deal with particular atrocities. Such tribunals are non-permanent bodies and are dissolved following the conclusion of the hearing and determinations they make. Atrocities which have been subject to trial by such tribunals include the genocide in Rwanda (prosecuted under the ICTR), war crimes in Bosnia Herzegovina perpetrated by Yugoslavia during a conflict in the region in the 1990s (prosecuted by the ICTY), the Nuremburg trials following WWII and the Pinochet case in Britain for human rights violations perpetrated in Chile.

W-Info 10 The ICTY and the ICTR

The characteristics of the legal and institutional structure of the International Criminal Tribunal for the Former Yugoslavia (ICTY) as well as those of the International Criminal Tribunal for Rwanda (ICTR) – cannot be properly understood without taking into consideration the circumstances in which the Security Council decided that an international tribunal should be established for the prosecution of persons responsible for serious violations of international humanitarian law committed.

The single most important element that sets the ICTY and the ICTR apart (and for that matter also the ICC) from all other international judicial bodies, is that they are criminal courts. This means that the parties to the judicial process are always, on the one hand individuals, as indictée, and on the other hand the Prosecutor. Secondly, unlike in the case of all other international judicial bodies, States and international organizations do not have standing. Individuals convicted of crimes of genocide or crimes against humanity are subject to criminal sanctions (i.e., serving jail periods up to life-sentencing). Accordingly the ICTY and the ICTR have a special detention unit located at the Hague and in Arusha, respectively.

Finally, the jurisdiction of the ICTY and the ICTR is not exclusive but concurrent with that of national courts. However, both have primacy over national courts (something the ICC does not have). At any stage of the procedure, the two *ad hoc* international criminal tribunals may formally request the national courts to defer competence.

Source: <http://pict-pcti.org/courts/ICTY.html>

International tribunals need not be UN based. For example, the ICC is independent of the UN. Similarly, the European Court of Justice is the tribunal for the EU and hears matters brought by EU member States. Also, the European Court of Human Rights is a part of the Council of Europe – another regional inter-governmental organisation (IGO).

W-Info 11 The latest *ad hoc* war tribunal – the ECCC in Cambodia

The Khmer Rouge regime took power on 17 April 1975 and was overthrown on 7 January 1979. Perhaps up to three million people perished during this period of 3 years, 8 months and 20 days. The end of Khmer Rouge period was followed by a civil war. That war finally ended in 1998, when the Khmer Rouge political and military structures were dismantled. In 1997 the government requested the United Nations (UN) to assist in establishing a trial to prosecute the senior leaders of the Khmer Rouge. In 2001 the Cambodian National Assembly passed a law to create a court to try serious crimes committed during the Khmer Rouge regime 1975–1979. This court is called the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea (Extraordinary Chambers or ECCC). The government of Cambodia insisted that, for the sake of the Cambodian people, the trial must be held in Cambodia using Cambodian staff and judges together with foreign personnel. Cambodia invited international participation due to the weakness of the Cambodian legal system and the international nature of the crimes, and to help in meeting international standards of justice. An agreement with the UN was reached in June 2003 detailing how the international community will assist and participate in the Extraordinary Chambers. This special new court was created by the government and the UN but is independent of them.

Source: http://www.eccc.gov.kh/english/about_eccc.aspx

Kaing Guek Eav Convicted Of Crimes Against Humanity And Grave Breaches Of The Geneva Conventions Of 1949 (July 2010)

The Trial Chamber of the (ECCC) found Kaing Guek Eav *alias* Duch guilty of crimes against humanity and grave breaches of the Geneva Conventions of 1949 and sentenced him to 35 (thirty-five) years of imprisonment. Kaing Guek Eav, the first person to stand trial before the ECCC, served as Deputy and then Chairman of S-21, a security centre tasked with interrogating and executing persons perceived as enemies of Democratic Kampuchea by the Communist Party of Kampuchea. S-21 was operational between 1975 and 1979. The Chamber found that every individual detained within S-21 was destined for execution in accordance with the Communist Party of Kampuchea policy to “smash” all enemies. In addition to mass executions, many detainees died as a result of torture and their conditions of detention. Although finding a minimum of 12,272 individuals to have been detained and executed at S-21 on the basis of prisoner lists, the Chamber indicated that the actual number of detainees is likely to have been considerably greater. Kaing Guek Eav was convicted of crimes against humanity (persecution on political grounds) (incorporating various other crimes against humanity, including extermination, imprisonment and torture), as well as numerous grave breaches of the *Geneva Conventions* of 1949, for which, by a majority, the Chamber imposed a single, consolidated sentence of 35 (thirty-five) years of imprisonment. In deciding on an appropriate sentence, the Chamber noted a number of aggravating features, in particular the gravity of the offences, which were perpetrated against at least 12,272 victims over a prolonged period. In 2011 Kaing appealed the sentence stating that the court had no jurisdiction to try him and further that the sentence was too high. The Appeals Court dismissed the appeal and found the sentence manifestly low – increasing the penalty to life imprisonment in 2012.

Sources: http://www.eccc.gov.kh/english/cabinet/press/162/20100726_Press_Release_Case_001_ENG.pdf and <http://www.eccc.gov.kh/sites/default/files/documents/court/03022012Summary-Eng.pdf>

Other international courts

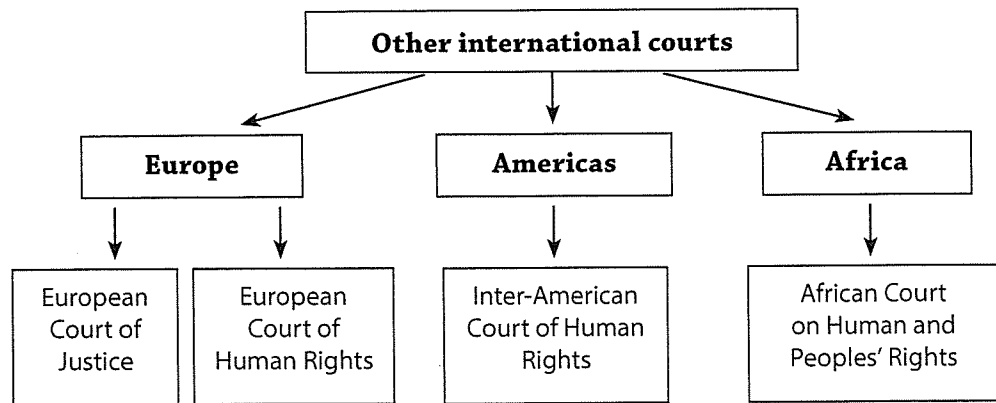


Figure 6 A summary of international courts (excluding ICJ and ICC)

There are four other permanent international courts. A feature of each of these courts is that individuals have legal standing. In this regard they differ from the ICJ.

European Court of Justice, ECJ (court of the European Union, EU)

The European Court of Justice interprets EU law to make sure it is applied in the same way in all EU countries. It also settles legal disputes between EU governments and EU institutions. Individuals, companies or organisations can also bring cases before the Court if they feel their rights have been infringed by an EU institution.

European Court of Human Rights (ECHR)

The European Court of Human Rights is an international court set up in 1959. It rules on individual or State applications alleging violations of the civil and political rights set out in the European Convention on Human Rights. Since 1998 it has sat as a full-time court and individuals can apply to it directly.

In almost fifty years the Court has delivered more than 10,000 judgments. These are binding on the countries concerned and have led governments to alter their legislation and administrative practice in a wide range of areas. The Court's case-law makes the Convention a powerful living instrument for meeting new challenges and consolidating the rule of law and democracy in Europe.

The Court is based in Strasbourg, in the Human Rights Building designed by the British architect Richard Rogers in 1994 – a building whose image is known worldwide. From here, the Court monitors respect for the human rights of 800 million Europeans in the 47 Council of Europe member States that have ratified the Convention.

Source: http://www.echr.coe.int/NR/rdonlyres/DF074FE4-96C2-4384-BFF6404AAF5BC585/0/Brochure_en_bref_EN.pdf

The African Court on Human and Peoples' Rights

The African Court on Human and Peoples' Rights was established by the *Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights* (Court's Protocol). The African Charter on Human and Peoples' Rights (Charter) is the main African human rights instrument that sets out the rights and duties relating to human and peoples' rights. The Charter establishes the African Commission on Human and Peoples' Rights (Commission), which is a quasi-judicial body that monitors the implementation of the Charter.

In 2004 the court commenced operations. The Court has the competence to take final and binding decisions on human rights violations perpetrated by African Union (AU) member States against individuals. The competence of the African Court on Human and Peoples' Rights (Court) is based on its jurisdiction and the law that it will apply when exercising this jurisdiction.

Jurisdiction

The Court has jurisdiction over all cases and disputes submitted to it regarding the interpretation and application of the African Charter on Human and Peoples' Rights (Charter), the Protocol to the *Charter on the Establishment of the African Court on Human and Peoples' Rights* (Court's Protocol) and any other relevant human rights instrument ratified by States that are party to a case. The Court shall determine disputes concerning whether it has jurisdiction to hear a matter.

Source: <http://www.african-court.org/en/>

The Inter-American Court of Human Rights

This court can assist individuals bring actions against the nation States that are parties to the Convention that creates the court. In November 1969 the Inter-American Specialized Conference on Human was held in San José, Costa Rica in which the delegates of the member states of the Organization of the American States (OAS) adopted the American Convention on Human Rights, which entered into force in 1978.

Twenty five American nations have ratified or have adopted the Convention: Argentina, Barbados, Bolivia, Brazil, Colombia, Costa Rica, Chile, Dominica, Ecuador, El Salvador, Granada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Dominican Republic, Suriname, Trinidad and Tobago, Uruguay and Venezuela. Trinidad and Tobago denounced the American Convention on Human Rights, by a communication addressed to the General Secretary of the OAS on May 26, 1998.

This regional treaty is binding to those States that ratify or adopt it and represents the culmination of a process that began at the end of World War II, when the American nations gathered in Mexico and decided to compose a declaration on human rights, in order to eventually adopt it as a convention. This declaration, the American Declaration of the Rights and Duties of Man, was approved by member States of the OAS in Bogotá, Colombia in 1948.

Source: <http://www.corteidh.or.cr/historia.cfm>

Review Questions – Courts and tribunals

1. Identify THREE (3) courts and THREE (3) international tribunals.
2. State THREE (3) aims of the ICJ.
3. Distinguish between the ICJ and the ICC.
4. Explain limitations of the effectiveness of the ICJ.
5. Discuss the jurisdiction of the ICC.
6. How many States are parties to the Rome Statute of the International Criminal Court?
7. Describe the grounds on which the US has refused to ratify the Rome Statute treaty for creation of the ICC.
8. Explain the significance of the non-ratification of the Rome Statute by USA, Israel, Russia, China and India.
9. Distinguish between the ICJ and ICC as permanent tribunals and those tribunals that are labelled '*ad hoc*'.
10. Explain the importance of the concurrent jurisdiction of the ICTY and ICTR.
11. Outline the purpose of the ECCC.
12. Examine the factors that led to the creation of the ECCC in Cambodia.
13. Assess the prosecution of Kaing Guek Eav for war crimes in Cambodia.
14. Assess the effectiveness of the ICJ, ICC and *ad hoc* tribunals for the individual and the nation State.
15. Outline the role and jurisdiction of the ECJ.
16. Outline the role and jurisdiction of the ECHR.
17. Briefly state the role and jurisdiction of the Inter-American Court of Human Rights.
18. Briefly state the role and jurisdiction of the African Court on Human and Peoples' Rights.