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MILITARY COURTS IN THE INTERNATIONAL SCENE



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Abstract

This Info Flash reviews the structures of military courts, addressing how they function and the legal statuses of these bodies. Additionally, it analyses several examples of relevant case law solved by international courts, namely, the Criminal Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda, and the International Criminal Court. Finally, the paper is concluded by providing some recommendations regarding how military courts can become more effective.

The Importance of Military Courts

Military courts are legal institutions that have jurisdiction over cases involving military personnel and other individuals subject to military law (Quéguiner, 2003). These courts are established to enforce military discipline and to ensure that military laws and regulations are followed (Wagner, 2003). Every court has its own jurisdiction, as will be explained subsequently.

Military courts are often necessary to ensure that military operations are conducted in an orderly and efficient manner (ICTY, n.d.). They are responsible for investigating and prosecuting violations of military law, including crimes committed by military personnel such as desertion, insubordination, and other offenses unique to military service (Wagner, 2003). In some countries, military courts also have jurisdiction over civilian offenses that are committed on military installations or that are related to military operations (Wagner, 2003). However, this practice is controversial and has been criticised by human rights groups who argue that military courts are not impartial and do not offer defendants the same legal protections as civilian courts (Quéguiner, 2003). Overall, the use of military courts is a complex issue that requires a careful balance between the needs of military operations and the rights of individuals accused of crimes (Wagner, 2003). It is important to ensure that military courts are fair, impartial and operate within the bounds of international human rights law.

There are also international military courts, which are judicial bodies that are established to prosecute individuals who are accused of committing war crimes, crimes against humanity, genocide and other serious violations of international humanitarian law (IHL) (Wilson, 2011). These courts are typically created by international agreements, such as the Geneva Conventions, and are staffed by from different countries. The purpose of such courts is to ensure that those who commit serious violations of international law are held accountable for their actions, regardless of their nationality (UN, 2017). These courts have the authority to investigate, prosecute and punish individuals who are responsible for war crimes and other serious violations of international law (Wilson, 2011). Some examples of international military courts include the International Criminal Tribunal for the former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Court (ICC). These courts were established to specifically bring to justice to those responsible for some of the most heinous crimes committed during armed conflicts (Barria & Roper, 2005).

Once again, there is often controversy surrounding the use of international military courts, as some countries argue that they interfere with national sovereignty and the ability of states to prosecute their own citizens (Quéguiner, 2003). Additionally, there are concerns about the impartiality and fairness of the courts, as they are often dominated by powerful countries and may be subject to external political pressure (Quéguiner, 2003). Despite these concerns, international military courts remain an important tool for holding individuals accountable for serious violations of IHL (Wilson, 2011). They are also crucial for the promotion of justice and accountability in situations of armed conflicts and mass atrocities (Wilson, 2011).

The UN's Establishment of Military Courts

The ICTY was established based on the Charter of the International Criminal Tribunal for the Former Yugoslavia, which is a legal instrument that was adopted by the United Nations Security Council on 25 May 1993 (ICTY, n.d.). The Tribunal was established to prosecute individuals who were responsible for serious violations of IHL that had occurred during the conflicts in the former Yugoslavia in the 1990s (Security Council Resolution 955, 1994). Such violations include war crimes, crimes against humanity, and genocide (ICTY, n.d.). The Charter outlines the mandate and jurisdiction of the ICTY and sets out the legal framework for the Tribunal's operations (ICTY, n.d.). Additionally, the ICTY has the power to investigate and prosecute individuals regardless of their official capacity and can try individuals in absentia if they cannot be apprehended (ICTY, n.d.).

The ICTY Charter also established the legal framework for the functioning of the Tribunal, including the appointment of judges, the rules of procedure and evidence and the procedures for appeals (ICTY, n.d.). The judicial panel of the ICTY is composed of 16 judges, all of whom are elected by the United Nations General Assembly for four-year terms (ICTY, n.d.). Finally, the Tribunal is supported by a Registry, which is responsible for administrative and logistical support (ICTY, n.d.).

Since its establishment, the ICTY has prosecuted numerous individuals for IHL violations committed during the conflicts in the former Yugoslavia (ICTY, n.d.). The Tribunal has been widely praised for its contribution to the development of international criminal law and for promoting accountability for serious violations of international law (ICTY, n.d.). The ICTY concluded its work in December 2017, after completing its mandate and transferring its remaining cases and archives to the International Residual Mechanism for Criminal Tribunals (ICTY, n.d.).

From Another Perspective, the ICTR

The ICTR was a United Nations court established in 1994 to prosecute those responsible for genocide and other serious violations of IHL committed during the Rwandan genocide (Mose, 2005). The genocide occurred in 1994, when Hutu extremists targeted members of the Tutsi ethnic group and moderate Hutus, and though the figures are debated, it resulted in up to 800,000 deaths (Meierhenrich, 2020; Reyntjens, 1996). As a response, the ICTR was established by the UN Security Council in November 1994 (Mose, 2005).

Its mandate was to prosecute individuals responsible for genocide, crimes against humanity and war crimes committed during this conflict. The Tribunal also had the authority to prosecute individuals who planned, instigated, ordered or otherwise aided and abetted in the commission of these crimes (Security Council Resolution 955, 1994). Over the course of its existence, the ICTR indicted and prosecuted a number of individuals, including high-level officials in the Rwandan government, military leaders and media executives who were accused of inciting and encouraging the genocide (United Nations General Assembly, 1948). The Tribunal was also involved in other important legal issues, including the definition of genocide and the use of sexual violence as a weapon of war (United Nations Security Council, 1994). The ICTR officially closed in December of 2015, after completing multiple mandates (ICTR, 2020; Mose, 2005). Its work has since been seen as an important contribution to international justice and accountability, and it has had a significant impact on the development of international criminal law (Mose, 2005).

Potential Improvements in the Functioning of Military Courts

Military courts and international military courts have an important role in our society. As with any legal system, there are always areas for improvement. Subsequently are some recommendations for better functioning of the courts include.

Transparency

There is a need for greater transparency in the military courts proceedings to ensure that they are fair and impartial. This could include making court documents and decisions more accessible to the public and increasing opportunities for media coverage of military trials. Moreover, when it comes to transparency most of the documents should be public and accessible for the military personnel.

Access to legal representation

Military law is a highly specialised area of law, it is complex and challenging for anyone who is not well-versed in this field. Military personnel should have access to qualified and experienced defence attorneys who can provide effective representation throughout the legal process. This is particularly important given the unique challenges that military defendants may face, such as the potential for deployment or transfer to a different base.

Training and qualifications for military judges and lawyers

Military judges and lawyers should receive rigorous training and ongoing professional development to ensure that they are equipped to handle complex legal issues and provide fair and impartial rulings. To ensure that military judges and lawyers are well-equipped to handle these responsibilities, the military judges' system provides extensive training and ongoing professional development opportunities. For example, the judges or the lawyers must undergo comprehensive initial training before taking on their roles, and they are required to participate in ongoing education and training programs throughout their careers.

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