

RESOLUTION N° 1/03 ON TRIAL FOR INTERNATIONAL CRIMES

On celebrating the 55th anniversary of promulgation of the American Declaration of the Rights and Duties of Man and the Universal Declaration of Human Rights, and in light of developments in the area of the international responsibility of individuals, the Inter-American Commission on Human Rights (IACHR) considers it necessary to recall that crimes against international law, such as genocide, crimes against humanity, and war crimes, represent very serious offenses to human dignity and a flagrant denial of the fundamental principles enshrined in the Charters of the Organization of American States and the United Nations, and thus must not remain in impunity.

The mission of the IACHR, as a principal organ of the OAS, is to promote respect for and the defense of human rights in the hemisphere. In this regard, it considers that one of the most important advances in contemporary international law is the establishment and consolidation of the international criminal responsibility of individuals, which, together with the principles of international and universal jurisdiction, and the many rules and types of jurisdiction of states that have been established to judge these types of crimes, contribute considerably to strengthening protection of human rights, and, even more significantly, to consolidating the rule of law and the fundamental freedoms of human beings in the world community.

In accordance with human rights treaties, states must respect and ensure the human rights of all persons under their jurisdiction. They are therefore obligated to investigate and punish any violation of these rights, especially when such violations also constitute crimes against international law. The IACHR notes that to ensure that these crimes do not go unpunished, both conventional and customary international law establish that states may avail themselves of different rules and types of jurisdiction in bringing such cases to trial.

On this point, the so-called Nuremberg Principles adopted by the United Nations General Assembly in 1946, the creation of *ad hoc* international criminal courts for the former Yugoslavia and Rwanda, in 1993 and 1994, and the adoption of the Statute of the International Criminal Court and its entry into force on July 1, 2002 as a permanent court, establish an international jurisdiction to judge individuals responsible for committing these serious crimes.

Moreover, developments in international law, in addition to important developments in the jurisprudence of various states, have made it possible to consolidate a universal jurisdiction and multiple jurisdictional bases for the purpose of prosecuting serious crimes under international law. Universal jurisdiction empowers states to establish their jurisdiction with a view to prosecuting, bringing to trial, and punishing persons considered responsible for committing serious crimes against international law. This universal jurisdiction is reflected in instruments such as the 1949 Geneva Conventions. In addition, a series of regional and international legal instruments provide for multiple jurisdictional bases for judging international crimes. These include the Inter-American Convention to Prevent and Punish Torture and the Inter-American Convention on the Forced Disappearance of Persons, within the OAS system, and the Convention Against Torture and Other Cruel, Inhumane, or Degrading Punishment or Treatment, and the International Convention against Taking Hostages, within the purview of the United Nations. These treaties require states to take steps to judge these crimes in their jurisdiction, or to extradite the accused persons for prosecution. Moreover, the consensus of states has extended this concept to include other international offenses, such as in the case of the Inter-American Convention Against Corruption.

In view of the gravity of these international crimes and the obligation to investigate, prosecute, punish, and make reparations, states should cooperate to ensure that the perpetrators of these crimes do not remain unpunished.

In carrying out this duty, states should consider that even when international crimes are so serious that they affect the entire international community, they primarily have an impact on the state in whose jurisdiction they occur, and especially on the people living in that state. Consequently, the principle of territoriality must prevail in the case of a jurisdictional conflict, provided that there are adequate, effective remedies in that state to prosecute such crimes and guarantee the application of rules of due process for the alleged perpetrators, and that there is an effective will to bring them to justice.

By virtue of the foregoing, and taking into account its recommendations on universal jurisdiction and the International Criminal Court in 1998, and on political asylum and its relationship to international crimes in 2000, as well as the recent General Assembly resolutions AG/RES. 1929 (XXXIII-0/03), AG/RES. 1900 (XXXII-0/02), AG/RES. 1771 (XXXI-O/01), AG/RES. 1770 (XXXI-O/01), AG/RES. 1706 (XXX-0/00) and AG/RES. 1619 (XXIX-O/99), the Inter-American Commission, exercising the powers stipulated in Article 41(b) of the American Convention on Human Rights, and in Article 18(b) of its Statute, resolves to:

1. URGE states to adopt the legislative and other measures needed to ensure punishment for international crimes such as genocide, crimes against humanity and war crimes.
2. URGE states to combat impunity in the case of international crimes by invoking and exercising their jurisdiction over such crimes on the basis of the different types of existing jurisdiction.
3. URGE states to take the necessary steps to consider these international crimes as offenses giving rise to extradition and either to grant the extradition of any person accused of having committed an international crime or proceed to bring that person to justice.
4. URGE states to cooperate in the fundamental task of preventing, punishing, providing reparations for, and abolishing these international crimes. To this end, in the event that two or more states invoke their jurisdiction to try persons accused of committing international crimes, they should give preference to the state whose jurisdiction is best suited for judging such crimes.
5. INDICATE that the principle of territoriality should prevail over that of nationality in the event that the state where the international crimes occurred wishes to bring them to justice, and that it offers due guarantees of a fair trial to the alleged perpetrators.
6. INDICATE that when a state does not grant extradition, it will submit the case to its competent authorities as if the crime had been committed within its jurisdiction, for the purposes of investigating, trying, and, where appropriate, punishing the perpetrators. The decision adopted by those authorities should be reported to the state that requested extradition.

7. URGE states that have not yet done so to ratify the various regional and international instruments on the subject, such as the Statute of the International Criminal Court.

Washington D.C., October 24, 2003