

International Criminal Law and Procedure

Resolution 995, 8 November 1994 - International Criminal Tribunal for Rwanda, statute (Art. 8)

Art. 8. Concurrent Jurisdiction

1. The International Tribunal for Rwanda and national courts shall have concurrent jurisdiction to prosecute persons for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens for such violations committed in the territory of the neighbouring States, between 1 January 1994 and 31 December 1994.

2. The International Tribunal for Rwanda shall have the primacy over the national courts of all States. At any stage of the procedure, the International Tribunal for Rwanda may formally request national courts to defer to its competence in accordance with the present Statute and the Rules of Procedure and Evidence of the International Tribunal for Rwanda.

DIANE BERNARD

See the annotation on Art. 9 ICTY Statute.

It should be noted that Article 8 of the ICTR Statute is a bit more precise than Article 9 of the ICTY Statute. Article 8 states that the ICTR has primacy over 'the national courts of all States' (Art. 8(2)) where the ICTY has 'primacy over national courts' (Art. 9(2)). This could be interpreted as a manifestation of the absolute character of international primacy, in a purely vertical model of international (criminal) law (see B.S. BROWN, 'Primacy of Complementarity: Reconciling the Jurisdiction of National Courts and International Criminal Tribunals', *Yale Journal of International Law* 23, 1998, p. 402). This precision is more likely to reflect the obligation for all Member States of the UN to cooperate with the ICTR. In the resolution creating the ICTR, the UN Security Council stressed 'the need for international cooperation to strengthen the courts and judicial system of Rwanda, having regard in particular to the necessity for those courts to deal with large numbers of suspects' (UNSC Resolution 955, 8 november 1994, al. 9). The larger extent of primacy would, in this sense more explicitly than in the ICTY Statute, include all and any national trials (and apply in particular to the exercise of universal jurisdiction).

International Criminal Law and Procedure

Resolution 995, 8 November 1994 - International Criminal Tribunal for Rwanda, statute (Art. 9)

Art. 9. *Non bis in idem*

1. No person shall be tried before a national court for acts constituting serious violations of international humanitarian law under the present Statute, for which he or she has already been tried by the International Tribunal for Rwanda.

2. A person who has been tried before a national court for acts constituting serious violations of international humanitarian law may be subsequently tried by the International Tribunal for Rwanda only if:

(a) The act for which he or she was tried was characterised as an ordinary crime; or

(b) The national court proceedings were not impartial or independent, were designed to shield the accused from international criminal responsibility, or the case was not diligently prosecuted.

3. In considering the penalty to be imposed on a person convicted of a crime under the present Statute, the International Tribunal for Rwanda shall take into account the extent to which any penalty imposed by a national court on the same person for the same act has already been served.

DIANE BERNARD

See the annotation on Art. 10 ICTY Statute.